

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 RICHMOND DIVISION

4 -----)
5))
5 UNITED STATES OF AMERICA))
6 v.)) Criminal No.
7 RICHARD TODD HAAS)) 3:16CR139
8)) February 8, 2017
8 -----)

9
10
11 COMPLETE TRANSCRIPT OF MOTION TO SUPPRESS
12 BEFORE THE HONORABLE ROBERT E. PAYNE
13 UNITED STATES DISTRICT JUDGE

14
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25 UNITED STATES DISTRICT COURT

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1 (The proceedings in this matter commenced at
2 10:10 a.m.)
3

4 THE CLERK: Case No. 3:16CR139, the United
5 States of America versus Richard Todd Haas.

6 The United States is represented by Heather
7 Mansfield. The defendant is represented by Valencia
8 Roberts and Carolyn Grady.

9 Are counsel ready to proceed?

10 MS. MANSFIELD: The United States is ready,
11 Your Honor.

12 MS. ROBERTS: The defense is ready.

13 THE COURT: All right. I have reviewed the
14 papers. Do you have anything to say on whether a
15 *Franks* hearing is required other than what you've said
16 in your papers?

17 MS. ROBERTS: No, Your Honor.

18 THE COURT: Ms. Mansfield, do you have
19 anything to say other than what you've said in your
20 papers on whether a *Franks* hearing is required?

21 MS. MANSFIELD: Nothing, Your Honor, in
22 addition to what we have said in our papers.

23 THE COURT: All right. I find that the
24 showing required for a *Franks* hearing has not been
25 made and therefore there is no need for a *Franks*

1 hearing.

2 All right. Is there any evidence on the
3 issue itself underlying the validity vel non of the
4 search warrant?

5 MS. MANSFIELD: Your Honor, the parties have
6 stipulated to the search warrants coming in that the
7 government attached to its responses, Government's
8 Exhibits A and B, respectively. So the government at
9 this time would have no additional evidence as to the
10 validity of the search warrants on the *Doyle* issue and
11 the nexus issue. Only argument.

12 THE COURT: What evidence do you have?

13 Anything?

14 MS. ROBERTS: Yes, Your Honor.

15 THE COURT: You agree Government's Exhibit A
16 and B can come in?

17 MS. ROBERTS: Your Honor --

18 THE COURT: Do you agree that A and B can
19 come in? She said you stipulated. Do you agree?
20 Looks like you attached them to your papers, too.

21 MS. ROBERTS: I did, Your Honor.

22 THE COURT: The answer is yes, they can come
23 in, right?

24 MS. ROBERTS: The government is not
25 presenting A and B. Defense does have the warrants

1 and we're prepared to submit it to the Court.

2 MS. MANSFIELD: As they were stipulated to,
3 Your Honor, there was a written stipulation.
4 Initially, they were marked as defense exhibits. I'm
5 fine calling them Defense A and B or Government's A
6 and B.

7 THE COURT: We will call them Defendant's
8 Exhibits A and B. They are admitted.

9 (Defendant's Exhibits A and B are entered
10 into evidence.)

11 THE COURT: All right. Any other evidence?

12 MS. ROBERTS: Your Honor --

13 THE COURT: Yes or no? Is there any more
14 evidence?

15 MS. ROBERTS: Yes, Your Honor, there is
16 additional evidence.

17 THE COURT: What is it?

18 MS. ROBERTS: Your Honor, with regards to the
19 additional evidence, we would, through testimony,
20 present evidence showing --

21 THE COURT: Excuse me. Who are you going to
22 call as your witnesses?

23 MS. ROBERTS: Agent Gonzalez, Your Honor.

24 THE COURT: What are you going to have him
25 testify to?

1 MS. ROBERTS: Your Honor, Agent Gonzalez will
2 provide testimony to the Court with regards to the
3 reliability of the confidential informant and what
4 information --

5 THE COURT: What difference does that make at
6 this stage? Don't you determine the fact of the
7 reliability of the informant based on what's in the
8 application?

9 MS. ROBERTS: Yes, Your Honor, but it's our
10 purpose to demonstrate that there was far more
11 information known to Agent Gonzalez that suggest the
12 unreliability --

13 THE COURT: What difference does that make if
14 what is known suggests it? That's what I'm trying to
15 get at.

16 MS. ROBERTS: Your Honor, the difference that
17 it makes is that if the agent knew of information and
18 intentionally left it out --

19 THE COURT: That's a *Franks* issue. I've held
20 that you haven't made the showing on that.

21 MS. ROBERTS: Your Honor, it's also a prong
22 with regards to the good faith exception in *Leon* where
23 information that the affiant knew was false or would
24 have known was false --

25 THE COURT: False is different than omitted.

1 You're saying he omitted something, not that he made
2 something false.

3 MS. ROBERTS: Or reckless disregard.

4 THE COURT: I'll hear the evidence, but I'm
5 going to tell you something. Neither one of you have
6 put the issue into proper focus. Get the evidence on
7 so I can get the hearing accomplished. And get right
8 straight to it, please.

9 MS. ROBERTS: Yes, Your Honor.

10 Your Honor, I would call Agent Gonzalez to
11 the stand.

12 THE COURT: Is that the only witness you
13 have?

14 MS. ROBERTS: That's the only witness we
15 anticipate, Your Honor.

16 Your Honor, pursuant to Rule 611(c)(2), I
17 would ask the Court for permission to treat Agent
18 Gonzalez as an adverse party or witness identified as
19 an adverse party. As such, we would ask the Court to
20 allow me to examine him using leading questions.

21 THE COURT: I'm waiting.

22 MS. MANSFIELD: I guess, Your Honor, at this
23 point in this proceeding I would object to that. I
24 don't believe there's any basis. We haven't even
25 begun the questioning of Agent Gonzalez yet to treat

1 him as an adverse or hostile party.

2 MS. ROBERTS: Your Honor, I'm not seeking to
3 treat him as hostile, but Rule 611(c) says that,
4 "Leading questions should not be used on direct
5 examination except as necessary to develop the
6 witness's testimony. Ordinarily, the Court should
7 allow leading questions:

8 (1) on cross-examination; and

9 (2) when a party calls a hostile witness, an
10 adverse party, or a witness identified with an adverse
11 party."

12 Agent Gonzalez is -- it is my position that
13 he is a witness identified --

14 THE COURT: Why are you standing here arguing
15 all this?

16 MS. ROBERTS: Your Honor, because I intended
17 to --

18 THE COURT: I thought the rule says that
19 rules of evidence don't apply in these proceedings
20 necessarily.

21 MS. ROBERTS: I don't understand the Court's
22 question. My request --

23 THE COURT: This is a preliminary hearing,
24 the status to which the rules of evidence don't apply,
25 is it not?

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1 MS. ROBERTS: In which case, Your Honor, I
2 would say --

3 THE COURT: In which case, you would say you
4 did not even need to make the motion. You just go
5 ahead and ask the questions.

6 MS. ROBERTS: Yes, Your Honor.

7 THE COURT: That's what you usually do.
8

9 MELVIN GONZALEZ, called by the Defendant, first
10 being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. ROBERTS:

13 Q Would you please state your full name for the
14 Court?

15 A Melvin Gonzalez.

16 Q Agent Gonzalez, how are you employed?

17 A I'm a special agent with the FBI assigned to the
18 Richmond Field Office.

19 Q Agent Gonzalez, how long have you been employed
20 with the FBI?

21 A It's been over 11 years.

22 Q Agent Gonzalez, do you lead investigations in all
23 areas, in all subject matters, or do you have a
24 particularized area in which you investigate crimes?

25 A I have previously worked in another division,

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1 cases involving violent crimes, corruption, drug
2 trafficking. Here in Richmond I'm assigned to the
3 Child Exploitation Task Force. I work sex trafficking
4 cases involving children and child pornography.

5 Q How long have you been working this particular
6 assignment with sex trafficking and child exploitation
7 in the Richmond Division?

8 A It's been a little over two years.

9 THE COURT: I think the issue you wanted to
10 develop was what knowledge he had about the
11 reliability about the informant in this case. Can we
12 get right to that?

13 BY MS. ROBERTS:

14 Q Agent Gonzalez, when did you first meet the
15 individual identified in the affidavit as CW?

16 A It was in June 2016.

17 Q Prior to the meeting, was CW an individual known
18 to you?

19 A No.

20 Q Was CW working with another law enforcement
21 officer or agent associated with this investigation?

22 A Not with this investigation. She had previously
23 worked with the FBI out of the Norfolk Division.

24 THE COURT: As what? As an employee or what?

25 THE WITNESS: She was a witness to child

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1 exploitation investigations in that division.

2 THE COURT: So she didn't work for the FBI?

3 THE WITNESS: No.

4 THE COURT: She was a witness --

5 THE WITNESS: She was a witness.

6 THE COURT: Wait a minute. She was a witness
7 in a case being investigated by the FBI; is that what
8 you're saying?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: All right.

11 BY MS. ROBERTS:

12 Q Agent Gonzalez, you failed to include that
13 information in the affidavit; is that correct?

14 A I believe it was not included in the affidavit
15 that she had been a previous witness.

16 Q When CW came to you --

17 THE COURT: That was in two cases or one?

18 THE WITNESS: I'm sure it was one case that
19 she assisted in. She had previously provided
20 information to the Norfolk Division in other matters,
21 but she was a witness to one case.

22 THE COURT: Did you know all this in
23 June 2016 when you applied for the warrant or have you
24 learned it since?

25 THE WITNESS: When we met with the agent and

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1 the informant in Norfolk on June, I believe the 16th,
2 the special agent advised us that she had previously
3 been a witness on a case -- in a case in the Norfolk
4 Division, a previous witness.

5 THE COURT: Then you went on to say in
6 addition to that that she had given other information
7 in the Norfolk office to the FBI. Did you know that
8 when you applied for the search warrant or did you
9 learn that on the day you interviewed her?

10 THE WITNESS: No, we -- I learned that
11 through the investigation after.

12 THE COURT: Before or after the search
13 warrant?

14 THE WITNESS: It was after the search
15 warrant.

16 THE COURT: All right. But as of the time of
17 the search warrant, you knew she had been a witness in
18 one case or two cases?

19 THE WITNESS: In one case, Your Honor.

20 THE COURT: Okay. In one case in Norfolk and
21 it was child exploitation.

22 THE WITNESS: It was a child exploitation sex
23 trafficking matter.

24 THE COURT: Okay. And she testified in
25 court?

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1 THE WITNESS: I believe so, but I don't have
2 any details towards her testimony or her part in the
3 investigation.

4 THE COURT: And you learned this from an FBI
5 agent?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: And you didn't put it in your
8 affidavit?

9 THE WITNESS: No, it was not included in the
10 affidavit. I believe it was not.

11 THE COURT: All right. All right. Go ahead.

12 MS. ROBERTS: I did have one question
13 prompted by your question of the agent.

14 BY MS. ROBERTS:

15 Q With regards to testifying in the Norfolk matter,
16 is it your testimony that you do not know whether or
17 not she testified?

18 A I do not know if she testified or not.

19 Q Okay. Now, when CW came to you with the
20 information regarding her observing child pornography
21 on Mr. Haas's laptop in May 2004, did you take -- what
22 measures, if any, did you --

23 THE COURT: May 2004?

24 MS. ROBERTS: I'm sorry.

25 Q May 2016. What measures, if any, did you take to

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1 verify that information?

2 A After she provided the information, we
3 corroborated Mr. Haas's identity with the CW. She
4 provided his phone number. We conducted subpoenas.
5 We collected records, and when we met with her, we
6 displayed his photo. She fully identified him. And
7 after that we conducted our normal record checks, and
8 we --

9 THE COURT: Record check of the witness?

10 THE WITNESS: No, of the subject involved in
11 the investigation, not the witness.

12 BY MS. ROBERTS:

13 Q And through these record checks, the information
14 that you were able to verify were basic pieces of
15 information such as his name, and date of birth, and
16 address; is that right?

17 A Addresses, businesses, associates.

18 Q You were not able to verify any of the information
19 that went to the specific allegation made regarding
20 his possession of child pornography; is that right?

21 A Well --

22 Q Through --

23 THE COURT: Him or the witness? What are you
24 talking about? We're talking about the reliability of
25 the witness.

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1 MS. ROBERTS: Yes, Your Honor, but I'm asking
2 what measures the agent took. He said that he
3 verified basic information; name, social security
4 number, address.

5 THE COURT: Just ask the question again.

6 THE WITNESS: Do you want me to explain what
7 we did before we wrote the affidavit?

8 Q No. I wanted you to explain what specific
9 measures did you take to verify the allegation that he
10 possessed child pornography in May of 2016.

11 A Well, we met with our CW after that in July 21,
12 and she provided additional details that she had
13 continued texting with Mr. Haas, and they were engaged
14 in multiple telephone calls, that he had continued to
15 approach the idea of producing child pornography with
16 a child that -- or CW was going to provide. That he
17 also had a child who he can bring into the production
18 of child pornography and was requesting our CW to
19 engage in sex with the child in order for him to
20 produce the child pornography.

21 Before we wrote the affidavit, we conducted -- it
22 was August 12. We did an attempt consensual telephone
23 call. It didn't go through, but Mr. Haas did text our
24 CW after the attempt. We provided a recording device
25 for CW, and she was able to conduct two consensual

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1 recordings of telephone calls. These calls were calls
2 from Mr. Haas to our CW.

3 During these calls, they clearly discuss the plan
4 to meet and produce child pornography. And based on
5 that information and the information previously
6 provided, we wrote an affidavit.

7 Q So if I can stop you for a minute and back you up,
8 Agent Gonzalez. With regards to the two conversations
9 that the CW alleged occurred between Mr. Haas and
10 herself in June of 2016, those were not recorded; is
11 that correct?

12 A Yes, they were. I'm sorry? In --

13 THE COURT: Why don't you get the dates and
14 be specific.

15 THE WITNESS: Yes, I'm sorry. The telephone
16 calls recorded were in August. I'm sorry.

17 Q Right. So the two conversations that allegedly
18 occurred in June, those dates weren't specified by the
19 CW, correct? She didn't give specific dates as to
20 when those conversations allegedly occurred?

21 A Which conversations? When they first -- they
22 first met in May. According to our CW, they met in
23 May.

24 THE COURT: Is that on the telephone or in
25 person?

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1 THE WITNESS: No, Mr. Haas called our CW.

2 THE COURT: On the telephone?

3 THE WITNESS: She's an escort. She's a
4 prostitute. He responded to an ad she had posted on
5 Backpage. They agreed to meet. Our CW met Mr. Haas
6 at his residence, and this took place sometime in May.

7 BY MS. ROBERTS:

8 Q Right. My question is --

9 THE COURT: Go on.

10 MS. ROBERTS: I'm sorry?

11 THE COURT: I want to hear the rest of this
12 so I understand it.

13 THE WITNESS: So after --

14 THE COURT: Met in May and then what
15 happened?

16 THE WITNESS: They met in May. In May,
17 that's when Mr. Haas displayed the computer. It was a
18 laptop that contained numerous images of child
19 pornography. And the witness described the images.
20 She said they were young, female, from the ages
21 probably five to early teens, probably 12 years old.
22 They were all engaged in sexual acts. Multiple
23 pictures were of multiple girls in a bed at the same
24 time with an adult male. They were being penetrated.
25 So she was very descriptive of the photos that she

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1 observed.

2 THE COURT: Excuse me. This viewing of the
3 computer, the viewing was on the computer. Was that
4 in the house, the defendant's house?

5 THE WITNESS: That was in the defendant's
6 house according to the CW.

7 THE COURT: All right. Excuse me. Go ahead,
8 Ms. Roberts.

9 BY MS. ROBERTS:

10 Q So as it relates to the June 2016 phone calls that
11 CW reported having occurred between Mr. Haas and
12 herself, those calls, those June calls, and the
13 substance, those were not recorded, correct?

14 A The months of June and July, they were not
15 recorded, but we did obtain telephone records which
16 indicated hundreds of calls between them and text
17 messages.

18 THE COURT: Between who?

19 THE WITNESS: Between our CW and Mr. Haas.

20 BY MS. ROBERTS:

21 Q And with regards to the text messages, you
22 actually were able to obtain the substance of the text
23 messages; is that correct?

24 A Partially.

25 Q In the substance of the text messages, they did

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1 not mention underage females specifically, correct?

2 A They did not. I would assume they would not do
3 such a thing.

4 Q They didn't contain or make mention of underage
5 females. That's a correct statement?

6 A Not in text messages, no.

7 Q Okay. And the text messages contained no mention
8 of child pornography, correct?

9 A Not in the text messages.

10 Q Okay. And in the text messages, they did make
11 clear that Mr. Haas and the CW were currently engaged
12 in sexual relations among one another, correct?

13 A It appeared that they were in some way engaged in
14 sex, in sexual acts. She is a prostitute and he was
15 her client.

16 Q And the substance of these text messages indicate
17 that CW would reach out to Mr. Haas and/or Mr. Haas
18 would reach out to CW for the purpose of the two of
19 them hooking up for sex; is that correct?

20 A I believe so, but they did not -- after their
21 encounter in May, according to our CW they did not
22 engage in any additional sex acts.

23 Q According to the CW?

24 A According to the CW, they did not. They met in
25 person one time in July, and Mr. Haas provided some

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1 money to our witness and continued to request and --
2 to request photos of the alleged 12-year-old that we
3 obviously made up, and he discussed his plan to
4 produce child pornography with the child.

5 Q And the text messages, going back to the text
6 messages, the text messages contained no discussion of
7 youth, correct?

8 A I already said no.

9 Q No discussion of nude pictures of children,
10 correct?

11 A It was not discussed during the text messages,
12 only through the consensual recordings.

13 Q So in fact there was nothing in the substance of
14 the text messages that you reviewed that would lead
15 you or that would -- there was nothing in the
16 substance of the text messages that connected the
17 conduct?

18 THE COURT: Text messages in May?

19 MS. ROBERTS: No. The text messages in June
20 and July.

21 Q There was nothing in the substance of those text
22 messages that would have indicated to you Mr. Haas's
23 interest in child pornography, correct?

24 A It didn't mention anything regarding child
25 pornography.

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1 THE COURT: I think we've been through this
2 six times now, and I don't want any more of it. I've
3 heard enough. I understand what he says, and it's not
4 going to change. It's been repeated, repeated,
5 repeated. So move on.

6 BY MS. ROBERTS:

7 Q If I go back to the confidential witness's
8 criminal history, did you -- after you met her in June
9 of 2016, did you run a criminal history check?

10 A No.

11 Q Of the CW?

12 A No, we did not.

13 Q Prior to swearing out the affidavit, did you?

14 A No, we did not.

15 Q Prior to swearing out the affidavit, did you run a
16 criminal history check of the CW?

17 A No, we did not.

18 Q Did you run a check of the CW's driving history?

19 THE COURT: Driving?

20 MS. ROBERTS: Yes, Your Honor.

21 THE COURT: What's that have to do with?

22 THE WITNESS: I don't think so. We ran her
23 CLEAR report.

24 THE COURT: What's that?

25 THE WITNESS: CLEAR, just to obtain her

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1 address and personal information.

2 THE COURT: What does CLEAR mean?

3 THE WITNESS: CLEAR is just a software that
4 we use. It's like Accurint.

5 THE COURT: You may think that I know that,
6 but you'd be wrong. So tell me what it is.

7 THE WITNESS: It's just a software that we
8 log into and we run names and biographical information
9 to obtain addresses. We can run comprehensive
10 reports.

11 THE COURT: Does it produce criminal
12 histories?

13 THE WITNESS: Only if we order a full
14 comprehensive report with criminal history.

15 THE COURT: It's capable of it?

16 THE WITNESS: It's capable.

17 THE COURT: But you didn't do it?

18 THE WITNESS: No. And it won't give you full
19 details. It would only say that X person has a
20 criminal record or a court case in X, Y state.

21 BY MS. ROBERTS:

22 Q Agent Gonzalez, when you swore out the affidavit
23 in August of 2016, you were aware that the CW had been
24 convicted of a felony in Chesapeake in 2012, correct?

25 THE COURT: Excuse me. The question is what

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1 you were aware of at the time you swore out the
2 warrant.

3 THE WITNESS: She advised that she had been
4 arrested in Virginia Beach for prostitution. And when
5 we swore out the affidavit in -- in September, you
6 said?

7 BY MS. ROBERTS:

8 Q No. You swore the affidavit, the first affidavit
9 was sworn on August 31st, 2016 --

10 A August 31st.

11 Q -- is that correct?

12 A Yes. We were aware that she had been charged also
13 in Henrico with a felony.

14 Q My question to you, Agent Gonzalez, is were you
15 aware on August 31st when you swore the first
16 affidavit that the CW had been convicted in 2012 of a
17 felony offense in Chesapeake, Virginia?

18 A No, no, no.

19 Q When you swore out the affidavit first on
20 August 31st and then on September 1st of 2016, were
21 you aware that the CW was on felony probation
22 supervision with the State of Virginia?

23 A Yes.

24 Q And you didn't include that information in the
25 affidavit, correct?

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1 A No.

2 THE COURT: Excuse me. You knew then that
3 she was on -- I don't know what felony probation
4 means. You knew if she was on probation, she had been
5 convicted of some offense; is that right?

6 THE WITNESS: Yes.

7 THE COURT: What offense did you know she'd
8 been convicted of to get her on probation?

9 THE WITNESS: She said that she was driving
10 without a license in Virginia Beach, and she was
11 arrested. And this took place in -- we had a meeting
12 with her in July, and she advised that she had been
13 pulled over by a police officer in Henrico, that she
14 was not supposed to be driving, so she provided false
15 information to a police officer. And when we got
16 involved in that, we then were aware that she was
17 actually in probation, and I believe she was in
18 probation -- it was something related to Virginia
19 Beach. I don't know if it was the driving without the
20 license or she was -- because we know and we knew back
21 then that she was involved in prostitution --

22 THE COURT: Whoa, whoa, whoa. I'm just lost
23 with all this. Now, the question is: As of
24 August 31, 2016, did you know she had been convicted
25 of a felony in 2012 in Chesapeake? And your answer to

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1 that was, no, you didn't know that. Right?

2 THE WITNESS: Not the 2012 felony. I knew
3 she had a --

4 THE COURT: Just a moment.

5 THE WITNESS: Okay.

6 THE COURT: But you knew she was -- as of the
7 time of the affidavit, you knew she was on probation.

8 THE WITNESS: Yes.

9 THE COURT: Then you said that she told you
10 that she was on probation for driving without a
11 license in Virginia Beach. And then you mention
12 something about lying to a police officer in Henrico
13 where she was arrested for driving without a license.
14 To me, that's somewhat inconsistent. So I want you to
15 clarify that. Take it one at a time.

16 THE WITNESS: Okay.

17 THE COURT: You knew she was on probation as
18 of the time you executed the affidavit, right?

19 THE WITNESS: Yes.

20 THE COURT: What was the offense for which
21 she was on probation?

22 THE WITNESS: Well, I thought it had to be
23 something related to prostitution, but we did not run
24 her criminal record until January of 2017 when the
25 AUSAs requested it.

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1 THE COURT: That's not the question I asked
2 you. What offense did you know she was on probation
3 for?

4 THE WITNESS: I don't know what she was on
5 probation for.

6 THE COURT: So you never verified that?

7 THE WITNESS: No.

8 THE COURT: Okay.

9 BY MS. ROBERTS:

10 Q And, Agent Gonzalez, did I understand you to say
11 that CW told you she was on probation for a
12 prostitution offense?

13 A No.

14 Q In Virginia Beach?

15 A No. She advised she had been previously arrested
16 for prostitution and that she was on probation, but
17 she never said she was on probation for prostitution
18 or for driving without a license. She did not have a
19 license. That's what she said.

20 THE COURT: Well, what is this all about?

21 MS. ROBERTS: Your Honor, I'm going straight
22 to the Henrico false statement right now.

23 THE COURT: You're not going anywhere until I
24 understand basically what he just said. Excuse me. I
25 have to understand that.

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1 It's very important that I know what you knew
2 in August of 2016, not what you found out in January
3 of 2017 or later. If somebody wants to develop that,
4 they can develop it. Right now we're talking about
5 2016.

6 THE WITNESS: Uh-huh.

7 THE COURT: So 2016, right?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: You did not know of the felony
10 2012 conviction in Chesapeake?

11 THE WITNESS: No.

12 THE COURT: In August of 2016, before you did
13 the search warrant affidavit for the house, you knew
14 from her that she was on probation?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: And you learned that from her
17 when?

18 THE WITNESS: I learned that from her
19 July 21.

20 THE COURT: All right. Did you ever
21 thereafter before you issued the affidavit search
22 warrant determine what the offense was for which she
23 was on probation?

24 THE WITNESS: No, Your Honor.

25 THE COURT: Now, you mention the confidential

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1 witness had told you she had been arrested for
2 prostitution. When did she tell you that?

3 THE WITNESS: During the course of the
4 investigation when we talked to her, but I don't
5 recall the exact date.

6 THE COURT: Give me a month and a year.

7 THE WITNESS: It was definitely before we
8 wrote the affidavit.

9 THE COURT: Okay. And she told you she was
10 arrested for prostitution?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: And is it from what you said
13 earlier, I understood you to say you assumed that the
14 reason she was on probation was because she had been
15 arrested for prostitution; is that what you assumed?

16 THE WITNESS: I assumed that.

17 THE COURT: You know as a law enforcement
18 officer that she could not have been on probation if
19 she weren't convicted. You know that, don't you?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: So you also assumed that she had
22 been convicted of prostitution; is that right or not?
23 It had never crossed your mind?

24 THE WITNESS: I didn't give importance to it.

25 THE COURT: What?

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1 THE WITNESS: I didn't think it was important
2 at the time, so I didn't look into it.

3 THE COURT: Do you know whether prostitution
4 for which she was arrested was a felony?

5 THE WITNESS: Well, we --

6 THE COURT: Did you know as of August 31,
7 2016?

8 THE WITNESS: No, but we work along with
9 vice, different vice groups, and we detain many
10 individuals that are involved in prostitution, and
11 they're not charged with felonies but charged with
12 misdemeanors, and their charges related to
13 prostitution but they're not felonies. So I can't say
14 that I knew that she was on probation for a
15 prostitution charge.

16 THE COURT: You just assumed that?

17 THE WITNESS: I assumed it.

18 THE COURT: At the time if you were arrested
19 on a misdemeanor probation charge and had been
20 convicted, could you be on probation as well? Is
21 probation a permissible sentence for a misdemeanor
22 conviction for prostitution?

23 THE WITNESS: I don't know.

24 THE COURT: All right. Go right ahead. You
25 want to get into the Henrico thing?

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1 MS. ROBERTS: Yes, Your Honor.

2 THE COURT: Let's get into the details.

3 BY MS. ROBERTS:

4 Q Now, you met with CW on July 21st of 2016 in a
5 parking lot located here in the City of Richmond,
6 correct?

7 A I believe it was Henrico.

8 Q In Henrico, here in the general Richmond area,
9 correct?

10 A Yes, ma'am.

11 Q And the meeting is summarized in a report authored
12 by you dated September 1st, 2016, correct?

13 A I would have to see the report. Yes, this is the
14 report.

15 Q And, Agent Gonzalez --

16 THE COURT: Is that a 302?

17 THE WITNESS: Yes, sir.

18 THE COURT: Go on, now.

19 BY MS. ROBERTS:

20 Q On that date, did the CW tell you that she had
21 been -- had an encounter with Henrico County Police
22 one week earlier on July 14, 2016?

23 A She voluntarily advised us of that, yes.

24 Q And did she tell you at that time -- did she tell
25 you on July 21st that when she had that encounter one

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1 week prior that she provided a false statement to the
2 officer with regards to her identity?

3 A Yes, she did.

4 Q Did she also tell you that she provided
5 identifying information to the officer which belonged
6 to her sister?

7 A Yes, she did.

8 Q And when she provided that information to the
9 officer, did she tell you that she also signed her
10 sister's name to each of the summonses that were
11 issued?

12 A I'm pretty sure she did.

13 Q In fact, the Henrico police officer released her
14 on July 14, 2016, not knowing that she had forged the
15 uniform summons; is that correct?

16 A Yes, that is correct.

17 Q And all of this information you knew prior to your
18 swearing the affidavit for the search warrant on
19 August 31st, correct?

20 A I knew the information, and I advised the
21 prosecutor of what was going on.

22 Q But you failed to include that information in your
23 affidavit submitted to the magistrate on a
24 determination of probable cause, correct?

25 A I didn't know I was obligated to include it in the

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1 affidavit.

2 Q Now, when CW was encountered by Henrico Police on
3 June 14th, she was cited for driving on a suspended
4 operator's license, correct?

5 A That is correct.

6 Q I'm sorry. When she was encountered on July 14th,
7 correction to the date, by Henrico police officers,
8 she was cited for driving on a suspended operator's
9 license, correct?

10 A Yes.

11 Q Now, after CW told you that she'd lied to Henrico
12 police, did you give her any instructions with regards
13 to correcting or reporting her false statements?

14 A I didn't have to give her instructions because she
15 voluntarily provided the information to us, and she
16 stated that she wanted to take care of it. So I
17 contacted one of our Henrico P.D. TFOs and explained
18 what was going on. He stated he was going to reach
19 out to the Commonwealth's Attorney Office. He talked
20 to a Henrico prosecutor. He got back with me and told
21 me that they had agreed to meet with her -- I think it
22 was the 25th that she had her next hearing. So I did
23 not have to turn her in Friday or Thursday when she
24 released the information to us.

25 So on the 25th, I made sure that she got to the

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1 court. So we drove to a hotel where she was staying
2 at. We picked her up. We drove her to the Henrico
3 Court. We walked her to the courtroom. The TFO
4 obtained a felony arrest warrant for providing false
5 information. She was charged. She was not given bail
6 and she was held in jail.

7 THE COURT: What's TFO?

8 THE WITNESS: He's an FBI task force agent.

9 THE COURT: She was charged with felony what?

10 THE WITNESS: She was charged with a felony
11 that day. I don't know the exact charges, but I guess
12 for providing false information to a police officer
13 who previously stopped her.

14 THE COURT: And she then was detained as a
15 result of that charge?

16 THE WITNESS: She was detained, yes, Your
17 Honor.

18 THE COURT: And that happened in court in
19 Henrico?

20 THE WITNESS: In Henrico, yes.

21 MS. ROBERTS: One moment, Your Honor.

22 Thank you, Your Honor.

23 BY MS. ROBERTS:

24 Q Agent Gonzalez, my question to you was whether or
25 not you advised CW to contact Henrico Police.

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1 THE COURT: He said that he did not have to
2 because she volunteered. She told him she wanted to
3 make it straight, and he therefore helped her do that.
4 We heard him testify to that completely. Let's go.

5 BY MS. ROBERTS:

6 Q Agent Gonzalez, in the report that you authored
7 that summarized the interview of CW on July 14th, in
8 your report you state that agents advised CW that she
9 needed to clarify this with Henrico County Police; is
10 that correct?

11 A Yes.

12 THE COURT: That interview was, I thought you
13 said, was July 21.

14 THE WITNESS: It was July 21.

15 MS. ROBERTS: I'm sorry. The July 21 was the
16 interview.

17 THE COURT: Yeah.

18 MS. ROBERTS: Yes, Your Honor.

19 THE COURT: So you put the wrong date in the
20 question. That's what I'm saying. Let's just keep it
21 straight, please.

22 All right. So in his 302, he said that he
23 told her what?

24 MS. ROBERTS: That she needed to clarify
25 this.

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1 THE COURT: Okay.

2 MS. ROBERTS: With Henrico County Police.

3 THE COURT: All right. And that's in your
4 302?

5 THE WITNESS: Yes.

6 MS. ROBERTS: Your Honor --

7 THE WITNESS: She voluntarily provided the
8 information to us. She asked us how she could fix it,
9 and we told her that she needed to clarify it with
10 Henrico P.D.

11 THE COURT: What he said before.

12 THE WITNESS: We didn't instruct her to do
13 anything after that. We picked her up and we
14 basically turned her in.

15 BY MS. ROBERTS:

16 Q Agent Gonzalez, I've given you a copy of a
17 document. Do you recognize that document?

18 A Yes.

19 Q And what do you recognize that document to be?

20 A It's an FD-302.

21 THE COURT: What we doing here?

22 MS. ROBERTS: Your Honor, I'm about to move
23 the exhibit into evidence.

24 THE COURT: Why?

25 MS. ROBERTS: As Defense Exhibit --

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1 THE COURT: As impeachment?

2 MS. ROBERTS: Yes, Your Honor.

3 THE COURT: All right. Any objection?

4 MS. MANSFIELD: Your Honor, I believe the
5 agent has asked and answered the questions. I know
6 the rules of evidence don't, per se, apply, but I
7 think he's asked and answered the questions related to
8 what this says. I don't think there's any need to
9 admit his report into evidence.

10 THE COURT: It's not impeachment. Objection
11 sustained. He's answered the thing truthfully. He
12 just didn't say it quite the way you wanted him to say
13 it.

14 BY MS. ROBERTS:

15 Q Agent Gonzalez, you were aware that CW had a court
16 date for the Henrico matters prior to your swearing
17 the affidavit on August 31st; is that correct?

18 A Which court? Are we talking about the July 25th
19 or --

20 THE COURT: He testified he took her to court
21 on July the 25th, and it was at that time that a
22 charge was pressed against her. So obviously he knew
23 that she had the court date before August 31. I mean,
24 that's clear. So we don't need to explore that any
25 further. Are you asking about something different?

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1 MS. ROBERTS: Convictions, Your Honor. I'm
2 sorry.

3 THE WITNESS: It was during that time in
4 court that we were fully aware that she was on
5 probation. And after that we didn't follow-up with
6 her on any of her charges or what happened with her in
7 Henrico.

8 THE COURT: I think the question is: When
9 you swore out the affidavit for the search warrant,
10 had she been convicted to your knowledge of the charge
11 for which she was arrested on the 25th of July?

12 THE WITNESS: I believe she was not.

13 THE COURT: Had not been convicted?

14 THE WITNESS: Had not been.

15 THE COURT: Okay.

16 BY MS. ROBERTS:

17 Q Agent Gonzalez --

18 MS. ROBERTS: One moment, Your Honor.

19 BY MS. ROBERTS:

20 Q Agent Gonzalez, you've testified that prior to the
21 instant matter you had never used CW as an informant,
22 correct? That's your testimony?

23 THE COURT: I don't think he's testified
24 about whether he had used her at all yet in this
25 hearing.

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1 BY MS. ROBERTS:

2 Q Prior to the instant matter, had you ever used CW
3 as an informant?

4 A No. She was never open as an informant. She's
5 addressed in our reports as a witness, a complainant.

6 THE COURT: CW is a designation in the FBI
7 shorthand for witness. CI is for confidential
8 informant; is that right?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: So your designations treat her as
11 CW, a witness; is that what you're saying?

12 THE WITNESS: Yes, we treat witnesses very
13 differently than we treat informants.

14 MS. ROBERTS: Okay.

15 BY MS. ROBERTS:

16 Q And it was -- moving to the CW's statements
17 regarding the images on the laptop in May of 2016.
18 Did CW specify when exactly in May 2016 Mr. Haas
19 allegedly showed her the CP on his computer?

20 A Not the exact date. According to telephone
21 records, we know that they were in contact May 23,
22 2016, and thereafter many, many times.

23 Q And you don't know whether or not they had been in
24 contact prior to May 23rd by some other means other
25 than telephone?

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1 A Well, the witness advised that she knew Mr. Haas
2 from like four years ago. So they have known each
3 other for a while. She provided escort services to
4 him prior to their meet in May 2016.

5 THE COURT: When you say "escort services,"
6 are you saying she serviced him as a prostitute?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: So she had been a prostitute, and
9 he had paid for her services before they met, and she
10 saw the images on his computer?

11 THE WITNESS: Yes, Your Honor. She advised
12 that she met Mr. Haas for the first time approximately
13 four years ago, and that Mr. Haas back then approached
14 her and talked to her about wanting to have sexual
15 encounters with younger females.

16 Q But the CW did not report that alleged statement
17 to law enforcement, correct?

18 A She did not.

19 THE COURT: Wait just a minute. I thought he
20 just said she told him.

21 MS. ROBERTS: No. She told him in 2016.

22 THE COURT: That's not the issue. You said
23 "she never." Never is a forever period of time with
24 no date on it. And he just now said that she reported
25 this to him. He's a law enforcement officer. So is

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1 your question that before, to his knowledge, did she
2 ever tell the police officers at or about the time of
3 the conversation in 2012 or so? Is that your
4 question?

5 MS. ROBERTS: Your Honor, whether prior to
6 telling him in 2016 whether she had provided that
7 information to law enforcement previously.

8 THE COURT: All right. Did she tell you
9 whether she had or not?

10 THE WITNESS: She denied mention of any
11 information. I am not aware if she provided the
12 information to another law enforcement agency but not
13 to myself.

14 BY MS. ROBERTS:

15 Q And in fact for four years --

16 THE COURT: What did she say that the
17 defendant said? What did the CW tell you that the
18 defendant had told her in the conversation four years
19 before? What was it he said?

20 THE WITNESS: CW stated that Mr. Haas after
21 they had sexual encounters, she explained the type of
22 sexual encounters that Mr. Haas was interested in, and
23 that Mr. Haas advised her that he wanted or he was
24 interested in having sexual encounters with younger
25 females. She understood that he was referring to

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1 underage --

2 MS. ROBERTS: Objection, Your Honor. I would
3 object to what she understood.

4 THE WITNESS: That's what she stated.

5 THE COURT: She said she understood?

6 THE WITNESS: That's not what I understood.

7 That's what she understood. That's what she advised
8 me.

9 THE COURT: Overruled.

10 She said she understood that to mean what?

11 THE WITNESS: To mean underage females. But
12 it wasn't until her meeting with him in 2016 that she
13 actually observed the child pornography images. And
14 that was the fact -- that was what prompted her to
15 approach law enforcement because she realized that Mr.
16 Haas was serious about it. You see, a lot of these --

17 MS. ROBERTS: Objection, Your Honor.

18 Objection at this point. It's not responsive. The
19 agent is testifying and going on.

20 THE WITNESS: I'm stating what she said.

21 THE COURT: You asked about the conversation.
22 He's saying what she said in it.

23 MS. ROBERTS: Your Honor, I asked a specific
24 question which was whether or not she had reported the
25 alleged conduct.

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1 THE COURT: I heard the question. He's just
2 answering the question. But I think we've gone far
3 enough. The prosecutor can develop it if she wants
4 to.

5 When you open the door, the horse can come
6 in, you know, when there's no rules of evidence.

7 All right.

8 BY MS. ROBERTS:

9 Q Agent Gonzalez, to be clear, between 2012 until
10 May of 2016, CW advised that she had had no contact
11 with Mr. Haas, correct?

12 A She did not provide specific dates. She said she
13 knew Mr. Haas from approximately four years. That it
14 had been a long time since she had not met him, and
15 she recontacted or remet him in May 2016. I don't
16 know the specific dates. I don't know if they --
17 maybe they didn't meet for a year or two. I do not
18 know. She did not provide that information.

19 THE COURT: Anything else?

20 MS. ROBERTS: Yes, Your Honor.

21 BY MS. ROBERTS:

22 Q Agent Gonzalez --

23 THE COURT: Your purpose here is the
24 reliability of the informant. You're getting far
25 afield now. I really want it confined to that.

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1 MS. ROBERTS: Your Honor, I think the
2 CW's engagement --

3 THE COURT: I just want it confined to that.

4 MS. ROBERTS: Yes, Your Honor. My
5 question --

6 THE COURT: Just do it. Do it. I don't need
7 to hear it and then hear you do it. Just do it.

8 BY MS. ROBERTS:

9 Q Agent Gonzalez, I'm going to hand you a report, a
10 302, dated September 22nd of 2016. And this report
11 alleges that you were present for an interview of CW
12 on June 16th of 2016.

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q Were you in fact present for the interview with CW
17 on June 16, 2016?

18 A I was present, yes.

19 Q And have you had an opportunity to review this
20 report, which was authored by John Holberg, one of
21 your FBI associates?

22 A I have seen this report before, yes.

23 Q Does this report accurately reflect the
24 information that CW provided to you and Agent Holberg
25 and others during that interview?

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1 A I'm pretty sure it did, yes. Or it does.

2 Q According to this report, CW advised you that
3 after Mr. Haas -- I'm sorry. One moment.

4 MS. ROBERTS: I'm sorry, Your Honor. I'm
5 trying to find the exact location in the report.

6 BY MS. ROBERTS:

7 Q In the report, it notes that Mr. Haas first --

8 THE COURT: Just ask him a question. If you
9 are going to need to impeach him, then you can do it,
10 but we don't need to read through the report. Just
11 ask him the question.

12 BY MS. ROBERTS:

13 Q During the interview, CW advised you and others
14 that she had lost contact with Mr. Haas four years
15 ago, correct?

16 A That is correct.

17 Q And so between 2012, the earlier contact between
18 the two, between 2012 and May of 2016, CW had not had
19 contact in those four years with Mr. Haas, correct?

20 A She did not provide that information, so I would
21 guess not.

22 THE COURT: All right. You've just wasted a
23 whole bunch of time over nothing. Basically, he said
24 from the beginning that she said that she hadn't seen
25 him for about four years, and they got back together

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1 in May of 2016. You can argue from that that they
2 hadn't seen each other in four years. Come on. I
3 don't think it's disputed. Let's go on.

4 BY MS. ROBERTS:

5 Q With regards to --

6 THE COURT: Not now. You just simply haven't
7 gotten anything out of that line of questioning that
8 dealt with the reliability of the informant. If your
9 next line of questioning doesn't deal with the
10 reliability of the informant, which is what you told
11 me you were putting him on for, then we're going to
12 stop the examination, let the government have their
13 cross, and then go on.

14 MS. ROBERTS: Yes, Your Honor.

15 THE COURT: Confine it to what we're doing.

16 BY MS. ROBERTS:

17 Q With regards to the information about the laptop
18 that the CW said she observed in 2016, did she provide
19 you with any details regarding the laptop's
20 appearance?

21 A She said it was a black laptop.

22 Q She said it was a black laptop?

23 A She said a black laptop.

24 Q Agent Gonzalez, you did not include the
25 description in the affidavit or the information in the

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1 affidavit that the CW said it was a black laptop,
2 correct?

3 A I would have to review the affidavit.

4 THE COURT: Well, it's either there or it
5 isn't.

6 BY MS. ROBERTS:

7 Q And she didn't identify the brand or manufacturer
8 of the laptop? For example, she didn't say it was a
9 Dell or a Toshiba or a Vaio, correct?

10 A No.

11 Q She didn't provide any specific identifying marks
12 or tell you anything specifically about the laptop
13 other than what you now say she told you, which was
14 that it was a black laptop, correct?

15 A That's correct, yes. She described the images
16 that were on the laptop. That's what we were --

17 THE COURT: She's just asking about what she
18 said about the laptop itself and what the description
19 was.

20 Anything else?

21 BY MS. ROBERTS:

22 Q Agent Gonzalez, the phone call, the recorded phone
23 calls which you reference in your August 31 and
24 September 1, 2016 search warrant affidavits, did you
25 listen to each of those phone calls prior to your

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1 swearing out the affidavit?

2 A Many times.

3 MS. ROBERTS: Your Honor, those are all of
4 the questions with regards to the reliability -- I'm
5 sorry. One moment.

6 Your Honor, those are all the questions that
7 I have with regards to the reliability of the
8 confidential informant. I do have questions for the
9 agent to clarify the details of the recovery of the
10 computer?

11 THE COURT: She's not a confidential
12 informant. She's a confidential witness.

13 MS. ROBERTS: Confidential witness. Your
14 Honor, I do have a line of questioning with regards to
15 the laptops that were recovered on September 1st.

16 THE COURT: How many were recovered on
17 September 1st?

18 MS. ROBERTS: Three, Your Honor.

19 THE COURT: So what? You haven't developed
20 anything in your papers about that at all. We're not
21 giving you a rehearsal for trial or discovery.

22 MS. ROBERTS: No, Your Honor.

23 THE COURT: You didn't raise anything about
24 any of the disparity between laptops or a different
25 laptop or make any point of them that I know of.

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1 Maybe I misread it.

2 MS. ROBERTS: Your Honor, it goes to
3 omissions by the affiant, Agent Gonzalez, with regards
4 to the affidavit that was sworn out on September 1st
5 for the third laptop that was recovered, which is the
6 search warrant that we are contesting here.

7 I'll tell the Court that --

8 THE COURT: What are you trying to prove?

9 That he didn't mention three laptops or what?

10 MS. ROBERTS: Your Honor, that at the time
11 that they had -- they first obtained the warrant for
12 Mr. Haas's home and personal vehicle, they executed
13 the warrant and they recovered two laptop computers
14 from the home.

15 THE COURT: Oh, they did?

16 MS. ROBERTS: Yes, Your Honor. They then
17 went to Mr. Haas's work site and arrested him. At the
18 time that they arrested him at the work site, agents
19 indicate that he was inside of his vehicle and that
20 when they removed him they saw another laptop.

21 THE COURT: All right.

22 MS. ROBERTS: The affidavit for the search
23 warrant relating to the 1995 tractor-trailer and the
24 laptop on which these images were allegedly found
25 failed to include information or to state that the

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1 agents had already issued or executed the warrant at
2 the home and recovered two laptops, which makes it
3 more likely or less likely --

4 THE COURT: It looks to me like all that does
5 is help the government. How does it help you?

6 MS. ROBERTS: No, Your Honor, because it is
7 therefore less likely that a laptop found inside of a
8 work vehicle is the personal laptop that the agents --
9 that the CW referenced having seen at the home.

10 THE COURT: She didn't describe it as a
11 personal laptop. She described it as a laptop. The
12 warrant says they can search for any laptops. It
13 doesn't say one, two, three or four.

14 MS. ROBERTS: Right, but that's the problem
15 with the second --

16 THE COURT: No, it isn't. It's not a
17 problem. Just ask the simple question: Had they
18 seized two previously? Just go on and get it done so
19 I can have this over with.

20 We are treading in areas that just -- you
21 don't raise this in your papers. There's no point to
22 it that I can tell. And you're using this as
23 discovery. I don't want to spend time with giving you
24 a deposition.

25 MS. ROBERTS: Your Honor --

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1 THE COURT: Now, ask the question and get it
2 done, please.

3 BY MS. ROBERTS:

4 Q Were you present during the recovery of two
5 laptops from Mr. Haas's home?

6 A I went to Mr. Haas's home.

7 THE COURT: I think yes or no. Were you
8 present when those were recovered?

9 THE WITNESS: I was not the seizing agent.

10 THE COURT: That isn't the question. The
11 question was: Were you present when they were seized?

12 THE WITNESS: I have to say I was present at
13 the home. I can't confirm that I saw the laptops
14 because there were many people conducting the search,
15 and I was focused on attempting to locate Mr. Haas.

16 THE COURT: At the time that you filled out
17 the warrant for -- by the time you filled out the
18 warrant on September the 1st, did you know that two
19 laptops had been seized from the home even though you
20 didn't see them at the home?

21 THE WITNESS: Probably, yes. Yes. I would
22 say yes.

23 THE COURT: All right, now. Anything else?

24 MS. ROBERTS: Your Honor --

25 BY MS. ROBERTS:

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1 Q And as a result of --

2 MS. ROBERTS: Your Honor, at this time I
3 would seek to move into evidence first the search
4 warrant affidavit, I'm sorry, the search warrant
5 return from the September 1st, 2016 search of Mr.
6 Haas's home.

7 THE COURT: Any objection?

8 MS. MANSFIELD: Your Honor, off the top of my
9 head I don't know the date that that was returned. I
10 don't think it has in any relevance. I don't object
11 to it being introduced.

12 THE COURT: It's the return of the search
13 executed on the 1st; is that right?

14 MS. ROBERTS: Yes, Your Honor.

15 THE COURT: Of the home.

16 MS. ROBERTS: Of the home, yes, Your Honor.

17 THE COURT: What's the number? Defendant's
18 Exhibit what?

19 MS. ROBERTS: Your Honor, we're labeling this
20 Defendant's Exhibit B.

21 THE COURT: No, you've already got a B.

22 MS. ROBERTS: We'll change that and make that
23 Defendant's Exhibit C, Your Honor.

24 THE COURT: It is admitted without objection.

25 (Defendant's Exhibit C is admitted into

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1 evidence.)

2 THE COURT: Anything else?

3 MS. ROBERTS: Your Honor, we move to enter,
4 if it hasn't already been entered, the search and
5 seizure warrant and affidavit related to the 1995 Ford
6 tractor.

7 THE COURT: Was that A or B? I'm not going
8 to make any rulings in a vacuum. Just tell me was it
9 A or B. If it's A and B, they've already been
10 admitted.

11 MS. ROBERTS: We'll call that B, Your Honor.

12 THE COURT: B has or has not been admitted?

13 MS. ROBERTS: There was a stipulation. I
14 didn't hand it up to the Court, though.

15 THE COURT: All right. So what is B?

16 MS. ROBERTS: B is the search warrant.

17 THE COURT: Which one?

18 MS. ROBERTS: For the tractor-trailer,
19 September 1st, 2016.

20 THE COURT: No objection to that?

21 MS. MANSFIELD: No, Your Honor, no objection.

22 THE COURT: All right, it's admitted.

23 (Defendant's Exhibit B previously admitted
24 into evidence on page 5.)

25 MS. ROBERTS: Your Honor, we would next move

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1 to admit into evidence Defendant's Exhibit D pursuant
2 to the stipulation. This is an accurate transcript of
3 the telephone calls between Mr. Haas and CW on
4 August 14th of 2016.

5 THE COURT: Any objection?

6 MS. MANSFIELD: No, Your Honor, no objection.

7 THE COURT: It's admitted.

8 (Defendant's Exhibit D is admitted into
9 evidence.)

10 MS. ROBERTS: In addition to that, Your
11 Honor, we would move as Defendant's Exhibit E the
12 transcript of the call between Mr. Haas and CW 1 on
13 August 16th of 2016.

14 THE COURT: CW 1?

15 MS. ROBERTS: I'm sorry. The exhibit says CW
16 1, but we'll just say CW. I'm sorry. I was reading
17 from the exhibit.

18 THE COURT: On what date?

19 MS. ROBERTS: On August 16th, 2016.

20 THE COURT: All right. Any objection?

21 MS. MANSFIELD: No, Your Honor, no objection.

22 THE COURT: It's admitted.

23 (Defendant's Exhibit E is admitted into
24 evidence.)

25 MS. ROBERTS: One moment.

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1 THE COURT: How about the first search
2 warrant, Exhibit A, are you offering that?

3 MS. ROBERTS: Your Honor, we are moving to
4 enter Exhibit A, the search warrant of the home, and
5 I'll provide the Court with a copy of that in just a
6 few moments.

7 THE COURT: All right. Anything else?
8 Anything else?

9 MS. ROBERTS: One moment, Your Honor.

10 Your Honor, finally, I would enter into
11 evidence the stipulation of the parties. And we're
12 just looking for --

13 THE COURT: What exhibit numbers?

14 MS. ROBERTS: This should be Defendant's
15 Exhibit F, Your Honor.

16 THE COURT: Any objection?

17 MS. MANSFIELD: No, Your Honor. The
18 government entered into the stipulations.

19 THE COURT: All right.

20 (Defendant's Exhibit F is admitted into
21 evidence.)

22 THE COURT: Anything else?

23 MS. ROBERTS: No, Your Honor. No further
24 questions of the witness and no further evidence.

25 THE COURT: As I understand it, you are not

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1 challenging the search warrant of the home, Exhibit A.
2 You're challenging the search warrant of the
3 tractor-trailer, Exhibit B.

4 MS. ROBERTS: That's correct, Your Honor.

5 THE COURT: All right.

6

7 CROSS-EXAMINATION

8 BY MS. MANSFIELD:

9 Q Agent Gonzalez, I just want to ask you a few
10 questions about the steps you took to corroborate the
11 statements that CW made to you. When you initially
12 met with the CW in June of 2016, did she provide you
13 the name of Mr. Haas?

14 A She provided the name "Todd." That's all she knew
15 at that time.

16 Q Did she provide you with the phone number for him
17 (804)402-6003?

18 A That is correct.

19 Q Did you then run a search of law enforcement
20 databases to determine that that number was linked as
21 a contact number for Mr. Haas?

22 A Yes, we did.

23 Q And at that time -- and did you also then once you
24 had that information show a photo of Mr. Haas to the
25 witness for her to identify?

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1 A Yes, we did.

2 Q And did she additionally provide you with -- did
3 you additionally show her a photo of the residence
4 that you connected to Mr. Haas at 661 Green Castle
5 Road?

6 A Yes, we did.

7 Q And did the witness identify that as being the
8 residence that she had visited?

9 A Yes, she did.

10 Q And that was a residence that you determined was
11 connected to Mr. Haas through a search of law
12 enforcement databases?

13 A It was previously owned by him.

14 Q And then, ultimately, as outlined in your search
15 warrant, when you met with the witness again in July,
16 would she have had additional conversations with Mr.
17 Haas about the production of child pornography or she
18 stated to you that she had had additional
19 conversations with Mr. Haas about the production of
20 child pornography, correct?

21 A She did, yes.

22 Q So then in August did you provide her with a
23 recording device to attempt to capture those
24 conversations in order to confirm and corroborate what
25 the witness was telling you?

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1 A That is correct.

2 MS. MANSFIELD: One moment, Your Honor. I
3 apologize.

4 BY MS. MANSFIELD:

5 Q Did this witness indicate to you that Mr. Haas had
6 suggested to her during their conversations that he
7 had access to children or children in the
8 neighborhood?

9 A Yes, she did. It was, according to the
10 information provided by the CW, Mr. Haas had access to
11 a 12-year-old.

12 Q And then a few days after those recorded phone
13 calls in August, it looks like August 18th, did you
14 indeed receive a report from the Richmond Police
15 Department that indicated that Mr. Haas was a subject
16 in a child molestation allegation?

17 A That is correct.

18 Q And at that time did you understand that
19 information to be further corroboration of what CW had
20 indicated to you was the substance of CW's
21 conversations with Mr. Haas?

22 A It was a clear indication that he was in fact
23 looking forward to producing child pornography.

24 Q Did you also then do a telephone analysis of Mr.
25 Haas's phone and connect that phone number to the

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1 Richmond Inn, which was detailed in that child
2 molestation allegation?

3 A The Richmond Inn and also the child's mother,
4 biological mother.

5 Q Agent Gonzalez, I just want to be clear. The
6 steps that you took after meting with the witness in
7 June and July, this was your effort to corroborate the
8 information that that witness had told you?

9 A Yes, of course.

10 MS. MANSFIELD: No questions, Your Honor, for
11 this witness.

12

13 REDIRECT EXAMINATION

14 BY MS. ROBERTS:

15 Q Agent Gonzalez, with regards to the Chesterfield
16 information regarding -- the information regarding the
17 alleged conduct in Chesterfield, the alleged victim in
18 that incident did not allege that Mr. Haas took
19 pictures, correct?

20 A No. When he sexually molested her, it included
21 fondling her vagina --

22 Q So the answer is no, he did not?

23 A No production of child pornography.

24 Q And the alleged victim in Chesterfield did not
25 indicate the use or presence of a laptop computer or

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1 computer at all by Mr. Haas; is that correct?

2 A She did not disclose it.

3 Q The alleged victim in Chesterfield did not allege
4 that the encounter with Mr. Haas involved a GPS
5 device, correct?

6 A Can you repeat the question?

7 Q She did not allege the use or presence by Mr. Haas
8 of a GPS device during the encounter that allegedly
9 took place?

10 A The child?

11 Q The child.

12 A No.

13 THE COURT: You keep saying the Chesterfield
14 victim. What date is this?

15 MS. ROBERTS: Your Honor, this is --

16 THE WITNESS: It's -- I'm sorry, Your Honor.

17 THE COURT: Is this 8-18-16?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: So that report came from the
20 Chesterfield Police Department?

21 THE WITNESS: Yes, Your Honor, and it was
22 referred to Chesterfield by Richmond P.D. We received
23 a copy of the Chesterfield and Richmond P.D. reports,
24 their investigative reports, and a forensic interview
25 that was conducted on the child.

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1 THE COURT: All right.

2 BY MS. ROBERTS:

3 Q The alleged victim in the Chesterfield incident,
4 she was not able or she did not identify Mr. Haas by
5 photo or name, correct?

6 A She provided the name "Todd." She did not
7 identify the photo that was displayed, which to my
8 knowledge it was a very old photo of Mr. Haas.

9 Q So she was shown a photo and she failed to
10 identify that photo as the person who allegedly
11 sexually assaulted her, correct?

12 A I was not present, but I was told that, yes. And
13 that is included in the affidavit.

14 MS. ROBERTS: One moment.

15 BY MS. ROBERTS:

16 Q With regard to the Chesterfield charges, those
17 charges were not pressed, correct?

18 A I believe they were not pressed after we federally
19 indicted him.

20 Q Those charges were not pressed prior to execution
21 of the search warrant; is that correct?

22 A No.

23 Q Subsequent to the search warrant?

24 A After.

25 Q Yes.

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1 MS. ROBERTS: Your Honor, at this time I have
2 no further questions for the witness, but I would, as
3 a housekeeping matter, seek to introduce Defendant's
4 Exhibit G. I failed to introduce that earlier, and
5 these are the text messages between the CW and Mr.
6 Haas that I questioned Agent Gonzalez and he testified
7 --

8 THE COURT: Any objection?

9 MS. MANSFIELD: No objection, Your Honor.

10 THE COURT: They're admitted without
11 objection.

12 (Defendant's Exhibit G is admitted into
13 evidence.)

14 MS. ROBERTS: No further questions.

15 THE COURT: Do you have anything?

16 MS. MANSFIELD: No, Your Honor.

17 THE COURT: Is that it?

18 MS. ROBERTS: Yes, Your Honor.

19 THE COURT: Is there any particular reason --
20 would you have a seat, please, Agent Gonzalez.

21 Why didn't you put in the affidavit that the
22 confidential informant had reported giving false
23 information to police officers in Henrico County in
24 July of 2016?

25 THE WITNESS: Why was it not included?

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1 THE COURT: Yes, why wasn't that included in
2 the affidavit?

3 THE WITNESS: I truly didn't think it was
4 relevant at that time. We had corroborated all the
5 information that she had provided, and she wasn't a --
6 she wasn't an open confidential informant for the FBI;
7 just a witness. So we -- the process for -- to handle
8 confidential informants and witnesses is very
9 different.

10 THE COURT: How is it different?

11 THE WITNESS: Confidential informants, we
12 open in our computer database, and we perform criminal
13 record checks. We have to seek permission from or
14 consult to get concurrence from an AUSA's office in
15 order to engage in consensual recordings or any type
16 of otherwise illegal activities.

17 THE COURT: Let me get this straight. If I
18 report something to the FBI, and it obviously in the
19 view of the FBI is a crime, are you saying that as a
20 witness, you would not do a criminal background check
21 on me?

22 THE WITNESS: If you're a witness?

23 THE COURT: Just a witness. I'm a guy who
24 picks up the phone and says, I saw a robbery downtown
25 here, and here's my name, and this is the date, and

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1 this is what I saw. Would you do a criminal
2 background check on me?

3 THE WITNESS: If I'm going to meet with you
4 in person for the first time and I don't know who you
5 are, yes, sir, I would run a criminal record. We did
6 not with our CW because she was referred to us by
7 another field office, and they had previously used her
8 in their investigations.

9 THE COURT: So CW came to you -- let me get
10 this straight. Did CW first report to the Norfolk
11 Field Office the viewing of child pornography on the
12 defendant's computer in May of 2016?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: And then that was relayed to you
15 because he lived in this area and this was your area;
16 is that right?

17 THE WITNESS: It was forwarded to one of our
18 TFOs, Holberg, because we're all part of the Child
19 Exploitation Team, and I got involved in the
20 investigation.

21 THE COURT: Why you as opposed to the Norfolk
22 Field Office?

23 THE WITNESS: Because it's in our territory.

24 THE COURT: Geographic territory or subject
25 matter territory?

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1 THE WITNESS: The subject was in our area of
2 responsibility in Chesterfield.

3 THE COURT: All right. Subject meaning who?

4 THE WITNESS: Mr. Haas.

5 THE COURT: All right. Anybody have any
6 questions based on what I asked?

7 MS. MANSFIELD: No, Your Honor.

8 THE COURT: I do have another question.

9 By the time that you issued the search
10 warrant on September 1st on the tractor-trailer, had
11 anybody viewed the computers seized in the defendant's
12 home earlier that day?

13 THE WITNESS: I'm pretty sure that we were in
14 the process of reviewing.

15 THE COURT: But did you know what the review
16 showed?

17 THE WITNESS: No, no. No, Your Honor.

18 THE COURT: All right. All right. Thank
19 you.

20 Can he be excused?

21 MS. ROBERTS: Yes, Your Honor.

22 MS. MANSFIELD: That's fine.

23 THE COURT: All right. You can step down.

24 THE WITNESS: Thank you, Your Honor.

25 (The witness was excused from the witness

1 stand.)

2 THE COURT: Do you all have argument?

3 MS. ROBERTS: Your Honor, I do have argument;
4 however, I would ask the Court to consider granting a
5 brief recess. I'd like to have time to use the
6 bathroom, and also to regroup given the Court's ruling
7 on the *Franks* issue. I just need to cut the fat from
8 my argument and go straight to the issues that are
9 before the Court today.

10 THE COURT: We will resume this hearing at
11 three o'clock. I'll hear everything you've got to say
12 at that time. And if you wish to argue that the
13 *Franks* hearing should be held, I don't know what you
14 would do other than what you've already done. You
15 said you were using this for the good faith exception
16 argued by the government. I'll hear something on how
17 you think you've met the first test for *Franks*, but I
18 don't think you have.

19 MS. ROBERTS: Thank you, Your Honor.

20 THE COURT: All right. I urge you to use
21 that time to cut out the -- what did you call it?
22 Lard, fat? Whatever you called it. That would be
23 good.

24 MS. ROBERTS: Yes, Your Honor.

25 THE COURT: All right. And the other

1 thing -- well, I'll talk to you later. Thank you.

2 We'll be in recess. I'll see you at three o'clock.

3 (Recess taken from 11:35 a.m. to 3:00 p.m.)

4 THE COURT: All right. It's your motion.

5 MS. ROBERTS: Yes, Your Honor. Thank you.

6 Your Honor, first, before I get started, I
7 would like to point out with regards to Defendant's
8 Exhibit F, which is the stipulations entered in this
9 case --

10 THE COURT: Uh-huh.

11 MS. ROBERTS: -- we did not fill that out at
12 the conclusion of the evidence once all of the
13 exhibits had been re-ordered. And so at this time I
14 would seek to actually insert exhibit identifiers in
15 each of the paragraphs.

16 Paragraph one said the parties stipulate and
17 agree that Defense Exhibit, and it's left blank, is a
18 true and accurate copy.

19 THE COURT: I can do that. I just didn't
20 understand what you were saying.

21 MS. ROBERTS: Yes, Your Honor. So paragraph
22 one should be, as referenced, Exhibit B.

23 THE COURT: Uh-huh.

24 MS. ROBERTS: Paragraph two, Exhibit A.

25 THE COURT: Uh-huh.

1 MS. ROBERTS: Three is Exhibit D.

2 THE COURT: D as in dog?

3 MS. ROBERTS: D as in dog. Four, Exhibit E.

4 THE COURT: All right.

5 MS. ROBERTS: Your Honor, moving on to the
6 arguments here, we are challenging the search warrant
7 issued on September 1, 2016, for the search of the
8 1995 Ford tractor-trailer, and the seizure of a
9 Samsung Galaxy S5 phone, laptop computer, and GPS
10 device.

11 We gladly accept the Court's invitation to
12 argue how we've met our burden with regards to the
13 first prong of *Franks v. Delaware*. Through the
14 testimony and evidence presented here today, the
15 defendant has made a *prima facie* showing that the
16 warrant contained --

17 THE COURT: Sorry. I've exhausted my papers
18 up here, whatever. All right.

19 MS. ROBERTS: Through testimony and evidence
20 we've demonstrated a *prima facie* showing that the
21 warrant contained both material omissions and
22 intentional misrepresentations by the affiant.

23 THE COURT: What are the material omissions?

24 MS. ROBERTS: With regards to the material
25 omissions, I've identified three for the Court. First

1 is the omission by the affiant regarding the lack of
2 voracity and unreliability of CW. And that was --

3 THE COURT: That's not even a basis for
4 anything. That's your conclusion. What's got to be
5 left out is a fact. If the witness -- if the affiant
6 did not believe that the woman lacked voracity, he had
7 no obligation to put that in there.

8 MS. ROBERTS: Your Honor --

9 THE COURT: So you have to point to some
10 objective fact that was left out. You can't argue
11 conclusions like that.

12 MS. ROBERTS: Yes, Your Honor.

13 THE COURT: So that ground is nonexistent.

14 MS. ROBERTS: So with regards to an omission
15 with regards to the voracity, no information in the
16 warrant with regards to the voracity and reliability
17 of the CW. Through testimony today --

18 THE COURT: Now, wait just a minute. There's
19 all kinds of information about corroboration. So that
20 has to do with voracity. Why don't you say what you
21 mean? You mean to say --

22 MS. ROBERTS: She's a convicted felon.

23 THE COURT: He did not put in there X.
24 That's what you mean, right? Don't make these big,
25 broad statements. He did not put in there what?

1 MS. ROBERTS: Your Honor, Agent Gonzalez
2 failed to include in the affidavit that CW was a
3 felon; that CW was currently on probation; that CW had
4 pending charges; that he had knowledge that CW
5 continued to violate the law even while working with
6 him and other agents in the instant matter.

7 THE COURT: We don't have anything like that
8 in the record. You want to tell me what you mean?

9 MS. ROBERTS: Yes, Your Honor.

10 THE COURT: That's a generalized conclusion
11 and you can't say those things. You have to be
12 specific.

13 MS. ROBERTS: Agent Gonzalez was aware that
14 there were felony warrants issued for CW as a result
15 of the forged summons that she tendered in Henrico
16 County in July of 2016. That is a fact that he was
17 aware of prior to his issuing or swearing out the
18 affidavit for the instant warrant.

19 He was also aware that CW had provided false
20 statements, orally provided false statements to law
21 enforcement. That is another fact that was known to
22 him on August 31st that he failed to include in the
23 affidavit provided to the magistrate.

24 THE COURT: Okay. Those are the material
25 omissions; is that right?

1 MS. ROBERTS: There are more.

2 THE COURT: Please make sure -- have you ever
3 heard the old adage, "If you're going to touch the
4 king, kill him"? Have you heard that? Do you know
5 what that means? If you're going to assert a point,
6 make sure it's got some merit to it. Don't make a
7 laundry list of everything you can conceivably think
8 of that somebody testified to that conceivably might
9 just in another atmosphere have some purpose.

10 MS. ROBERTS: Your Honor --

11 THE COURT: And you are repeating the same
12 things.

13 MS. ROBERTS: Your Honor, he was aware --
14 Agent Gonzalez was aware that CW continued to engage
15 in prostitution, and he was aware of that at the time
16 that he swore out the affidavit.

17 THE COURT: What do you mean engage in
18 prostitution? When? What testimony that he gave
19 showed that between the time that she talked to him in
20 May of 2016 and August 31, 2016, that he knew she was
21 engaging in prostitution during that time? She may
22 have, and it may very well be a reasonable inference,
23 but I don't remember any testimony where you asked
24 that or he said that. Do you see what I'm saying?

25 MS. ROBERTS: Your Honor, with regards to

1 that, I was referencing the two reports, but the Court
2 is correct that Your Honor did not allow the
3 introduction of the agent's report, which would have
4 contained that information. So I'll withdraw --

5 THE COURT: Anything else that are material
6 omissions?

7 MS. ROBERTS: Yes, Your Honor. The second
8 material omission --

9 THE COURT: No, that's not the second one.
10 You have one, two, three, four, five so far.

11 MS. ROBERTS: I'm sorry, Your Honor. I
12 grouped them all with regards to CW's credibility and
13 reliability.

14 THE COURT: All right. So this has to do
15 with omissions regarding credibility?

16 MS. ROBERTS: Yes.

17 THE COURT: I understand what you're saying.
18 That's what this whole thing was about, this hearing
19 was about, was the reliability of CW. And I thought
20 all these things related to --

21 MS. ROBERTS: All of those things do relate
22 to CW's credibility.

23 THE COURT: All right.

24 MS. ROBERTS: In addition to omissions
25 regarding CW's credibility, if the Court -- I direct

1 the Court's attention to the August 16th phone call,
2 which has been previously marked as Defense Exhibit, I
3 believe, E.

4 THE COURT: Is that the ones referred to in
5 the briefs?

6 MS. ROBERTS: They are both referenced in the
7 brief, Your Honor, but Defendant's Exhibit E is the
8 one most heavily relied upon or referenced.

9 THE COURT: This is a material omission?

10 MS. ROBERTS: This is a material omission,
11 Your Honor. I would direct the Court's --

12 THE COURT: Excuse me. It is a material
13 omission relating to what?

14 MS. ROBERTS: The affiant, Agent Gonzalez,
15 failed to include Mr. Haas's --

16 THE COURT: No. Relating to what large
17 topic? Like reliability. Have you shifted from
18 credibility and reliability to some other topic? You
19 told me you have three topics. I don't know what
20 topic we're on now.

21 MS. ROBERTS: This goes to the issue of
22 probable cause itself and the likelihood --

23 THE COURT: But that's not a material
24 omission.

25 MS. ROBERTS: Your Honor, if I can tell the

1 Court what the statement is that was --

2 THE COURT: I want you to tell me where it
3 fits so I can put it where it fits and get this
4 organized. See what happens here is, what this whole
5 thing consists of is a bunch of stuff, isolated things
6 strewn out onto the stage and leaving it to the Court
7 to try to put them somewhere so you figure out what it
8 is that in the test that you have to apply, what
9 evidence applies to what. And I'm trying to organize
10 that now so I understand your points.

11 So you have five material omissions that you
12 say relate to CW's credibility. You're now shifting
13 to material omissions relating to something else you
14 said. So what does it relate to?

15 MS. ROBERTS: The truthfulness of the
16 statements in the affidavit as presented by the agent.

17 THE COURT: So this has to do with the -- not
18 with a material omission. It has to do with whether
19 or not the agent's statement in the affidavit is true
20 or not, right?

21 MS. ROBERTS: It is --

22 THE COURT: Yes or no?

23 MS. ROBERTS: It is not a statement that's
24 included. It is a statement that is excluded that we
25 propose to the Court is material and has a direct

1 bearing on whether or not Mr. Haas in fact intended to
2 receive the items for himself or whether or not they
3 were for some other person.

4 THE COURT: That's not how it works. You are
5 attacking something here. On the *Franks*' side, you
6 are attacking something. What are you attacking?
7 You're saying that the agent omitted facts. He
8 omitted facts relating to the credibility of CW.

9 Now you're shifting to something that attacks
10 the agent, right? That is, he omitted something.
11 There is a fundamental principle at law that once you
12 start talking about something -- you have no
13 obligation to reveal certain things, for example, but
14 once you start talking, you have an obligation to say
15 all those things that make true what you're saying.
16 And so now you're saying, as I understand it, that the
17 agent failed to put in some things that were in this
18 Exhibit E that were necessary for him to have made a
19 true statement in the affidavit. Is that what you're
20 saying?

21 MS. ROBERTS: Yes.

22 THE COURT: All right. Where is the true
23 statement in the affidavit?

24 MS. ROBERTS: Your Honor, I would direct the
25 Court's attention to page two.

1 THE COURT: Of?

2 MS. ROBERTS: Of Exhibit E, which is the
3 August 16 phone call.

4 THE COURT: No. Nope. I'm sorry. I want to
5 know what statement in the affidavit we are measuring
6 this statement in Exhibit E against. That's all.

7 MS. ROBERTS: Your Honor, there is no
8 statement in the affidavit, and that's why I'm
9 referring to it as an omission to include a statement
10 in the affidavit that has a bearing on the
11 determination of probable cause in this case.

12 THE COURT: So you're not then saying that
13 the agent made a material misrepresentation?

14 MS. ROBERTS: Your Honor, I call these
15 omissions.

16 THE COURT: No. Answer the question.

17 MS. ROBERTS: Correct.

18 THE COURT: You're not saying he made a
19 material misrepresentation?

20 MS. ROBERTS: Correct.

21 THE COURT: Okay. So he made an omission
22 that has to do with what?

23 MS. ROBERTS: The truthfulness of the
24 statements in the affidavit.

25 THE COURT: That's misrepresentation. If

1 you're testing somebody's truthful statement, then I
2 want to know what -- you're saying this omission that
3 you're going to point to in four relates to something
4 that was said in the affidavit that you say is lacking
5 in truthfulness. So now I want to see, so I
6 understand what you're talking about, where it is in
7 the affidavit that is the statement you want me to
8 measure against what's in Exhibit E. Where is that
9 statement? Or is there none?

10 MS. ROBERTS: There is no statement.

11 THE COURT: Okay. Well, then go ahead and
12 say it your way. This is not how you presented it in
13 your papers. It's not how you presented it in your
14 argument, but let's go. All right.

15 So the transcript -- where is the transcript?
16 I've got it. Which line do you want? Which statement
17 do you want me to look at?

18 MS. ROBERTS: Your Honor --

19 THE COURT: Where is it?

20 MS. ROBERTS: In the phone call, page two
21 of -- and it's page two. It is three-fourths the way
22 down the page, and it starts, "CW says, 'What's the
23 range that you like?'"

24 THE COURT: Wait a minute. I haven't found
25 that yet. Okay.

1 MS. ROBERTS: Mr. Haas's response is, "It
2 ain't so much me as it is like other, but, you know,
3 around exactly like what you were saying before. You
4 know, give or take a little bit. You remember what
5 you were talking about before. That is, that is like
6 the most."

7 Your Honor, it is our position that --

8 THE COURT: Wait a minute. You left out the
9 rest of it. It says, "I remember I said I had a 12
10 and an 8," talking about the age of the children.

11 MS. ROBERTS: Your Honor, that is an
12 assumption.

13 THE COURT: That's not an assumption. That
14 is a logical connection between what Haas said because
15 he refers back to "You remember what you were talking
16 about before." She then says, This is what I was
17 talking about before. She says to articulate that, "I
18 remember. I said I had a 12 and an 8." That
19 statement fits together as a piece. You can't take
20 just part of it. And then Haas says as if to make
21 that clear, Yeah, that's the lower side of that is
22 definitely better. The lower side of eight to 12 is
23 definitely better. In other words, I like them at
24 eight years old or eight to 10. That's what the fair
25 reading of that statement is about.

1 MS. ROBERTS: Even if the Court -- if we were
2 to proceed with the Court's conclusion --

3 THE COURT: Then he goes on to say, "I mean,
4 there's definitely -- there's definitely money in
5 other, but, you know, I mean it's not as much as the
6 other."

7 MS. ROBERTS: Again, Your Honor, she asked --
8 and what I'm asking the Court to focus on, the Court
9 has said that this is a conversation about 12 and
10 eight-year-olds. Even assuming that it was a
11 conversation about 12 and eight-year-olds, she says,
12 "What's the range that you like?" And Mr. Haas stops
13 her and corrects her and says that it is not me. It
14 is others.

15 And so, Your Honor, the fact that Mr. Haas
16 includes that statement that it is not me as it is
17 like others, it reflects --

18 THE COURT: What are you talking about? You
19 mean what he likes personally in order to satisfy his
20 own personal proclivities while he's engaging in sex
21 with minors? Or do you mean it's the market I'm
22 serving, and the film I need to make has to satisfy
23 these people, and these people want 12 to
24 eight-year-olds? That's the way that statement reads
25 to me. But you're saying, "It ain't so much me as it

1 is like other, but, you know, around like exactly what
2 you were saying before, you know, give or take a
3 little bit." And this is almost an unintelligible
4 statement to begin with, but viewed in terms of the
5 question, what's the range that you like, like for
6 what? Like to pleasure himself or like to film?

7 Isn't that what this is all about?

8 MS. ROBERTS: Your Honor, if the Court --

9 THE COURT: Or like to read, like to look at?
10 What?

11 MS. ROBERTS: This entire telephone call is
12 only given context if you believe the information that
13 the CW provided in the unrecorded phone conversations
14 that she allegedly had with Mr. Haas. The Court has
15 accepted, it seems by the comments here, that this
16 was -- that these were conversations about Mr. Haas's
17 desire to obtain, one, images of child pornography
18 and, two, to obtain an actual underage female for
19 purposes of a sexual encounter.

20 THE COURT: What is the other inference you'd
21 have me make?

22 MS. ROBERTS: Your Honor, we don't know what
23 they're talking about. If the Court didn't have the
24 backdrop that they say -- that the government asserts
25 was provided by CW, if you don't have CW's explanation

1 of what this conversation is a continuation of or what
2 it's purported to be the subject matter of the
3 conversation, then what you have if you read this is
4 completely unintelligible, and it does not necessarily
5 reflect Mr. Haas's intention to seek nude photos or to
6 engage in sexual conduct with an underage female or
7 individual.

8 THE COURT: Well, if it is informed by what
9 the affidavit says occurred in the unrecorded
10 conversations, then it's reasonable to infer that
11 they're talking about making films or viewing or
12 having sex with people in the range of 12 to eight.

13 MS. ROBERTS: But the affidavit does not
14 contain information that provides a backdrop or
15 context except for what is provided by CW. There's no
16 other information.

17 THE COURT: Okay. So I believe CW. That
18 helps me give context to this if I am the magistrate
19 judge. I believe what he's related about CW is all
20 right. I understand. All right. I understand.

21 Move to a different topic, because I believe
22 this one doesn't fly very well.

23 MS. ROBERTS: Your Honor, the third omission
24 is the affiant, Agent Gonzalez's, failure to include
25 in the search warrant affidavit.

1 THE COURT: Which?

2 MS. ROBERTS: This is Exhibit B.

3 THE COURT: Uh-huh.

4 MS. ROBERTS: The search warrant affidavit of
5 the 1995 truck. I'd refer the Court to page 16,
6 paragraph 25 of Exhibit B.

7 THE COURT: Paragraph 25?

8 MS. ROBERTS: Paragraph 25, page 16,
9 paragraph 25.

10 THE COURT: Uh-huh.

11 MS. ROBERTS: Your Honor, what has occurred
12 factually before this is that --

13 THE COURT: No. Put me in the picture first.
14 Where?

15 MS. ROBERTS: Paragraph 25. Based on this
16 information, it starts the beginning of the paragraph,
17 the FBI obtained a search warrant for Haas's new
18 residence from this court on August 31st. The FBI
19 executed the search warrant early on September 1st but
20 found that Haas had already left for work.

21 THE COURT: Okay.

22 MS. ROBERTS: It goes on to say that during
23 the search incident that he was arrested at a
24 different location, and during the search incident to
25 arrest agents recovered a Samsung Galaxy s5 model

1 number phone from Mr. Haas's person.

2 Also during a protective sweep of the
3 tractor-trailer truck, an FBI agent observed a GPS
4 device attached to the windshield as well as a laptop
5 bag which contained a laptop computer.

6 THE COURT: So what did he not include in
7 that paragraph that you think he should have included?

8 MS. ROBERTS: Your Honor, we believe it was
9 material that he include the fact that agents during
10 the execution of the first search warrant had in fact
11 seized two laptop computers from the defendant's home.

12 The fact that those two laptop computers had
13 been seized and that it was specifically the target of
14 the search of his home or specifically identified as
15 material that they were seeking in the search of his
16 home, it makes it less likely that the laptop observed
17 inside of a work vehicle was the one that CW allegedly
18 saw some three months prior.

19 In furtherance of that argument, there's no
20 evidence that the CP images stored or possessed or, I
21 should say, the affidavit contains no evidence that
22 the CP images stored or possessed in Mr. Haas's work
23 truck -- I'm sorry. There's no evidence that there
24 were CP images stored or possessed in Mr. Haas's work
25 truck. There's no allegation of that.

1 The CW certainly didn't mention his work
2 truck, nor did the 11-year-old complainant, who was
3 also referenced in the search warrant affidavit.

4 In fact, Your Honor --

5 THE COURT: Anything else?

6 MS. ROBERTS: I would point the Court to
7 Exhibit G, which is the text messages.

8 THE COURT: Anything else about the
9 omissions?

10 MS. ROBERTS: Yes, Your Honor. This is with
11 regards to the omissions and the statement that
12 there's no evidence that he stored or possessed CP or
13 child pornography in the work truck. The text
14 messages exhibit that we've provided to the Court on
15 page 3 of that exhibit.

16 THE COURT: Are they numbered?

17 MS. ROBERTS: They are not numbered, Your
18 Honor. This is the way that they were provided in
19 discovery.

20 THE COURT: It starts, the message, "Damn.
21 Better drive fast"?

22 MS. ROBERTS: Yes, Your Honor.

23 THE COURT: So what?

24 MS. ROBERTS: Your Honor, there Mr. Haas
25 clearly states that he's driving. He says, "Dude,

1 there's no way I can get there this evening and then
2 get back home. Can I see you tomorrow night or are
3 you driving down here any this week? P.S. Don't have
4 laptop."

5 THE COURT: So what does that mean?

6 MS. ROBERTS: Your Honor, this is evidence --
7 some evidence that Mr. Haas does not travel with a
8 laptop. And that's contrary to what the government or
9 the affiant would have the magistrate to have believed
10 in asserting that the laptop -- that there was
11 probable cause to believe that the laptop found in the
12 work truck was related to the offense or to any
13 information that had been provided by the CW. There's
14 no nexus between that work truck and any alleged
15 unlawful conduct by Mr. Haas.

16 Your Honor, I would next move to intentional
17 misrepresentations that I believe we have demonstrated
18 here today. The affidavit contains at least two
19 material misstatements that directly bear on the
20 finding of probable cause.

21 If the Court looks to Exhibit B again, which
22 is the search warrant affidavit of the truck, page 12,
23 paragraph 11.

24 THE COURT: All right. Where?

25 MS. ROBERTS: Your Honor, if the Court

1 proceeds down to four lines from the bottom of the
2 page, it is mid line, and it begins, "Haas also
3 requested nude photos of underage females in exchange
4 of money." This paragraph -- I'm sorry. If I could
5 back up. The affiant indicates that on August 12,
6 2016, and August 13, 2016, CW recorded two telephone
7 calls with Haas. And this is information that says,
8 "During the calls, Haas advised," is the way that the
9 paragraph starts. So this paragraph is all about
10 information that or statements made by Mr. Haas or
11 information which was contained in the phone calls.
12 That statement that I had --

13 THE COURT: Tell me --

14 MS. ROBERTS: If the Court compares the
15 statement included in paragraph 11 of the affidavit
16 and compares that with the actual transcript of the
17 telephone call.

18 THE COURT: Where is it?

19 MS. ROBERTS: It is Exhibit E. And, Your
20 Honor, this is not a pinpoint cite --

21 THE COURT: Where is it?

22 MS. ROBERTS: -- for the Court.

23 THE COURT: Where is it? You're saying that
24 you have to compare that statement and the affidavit.

25 MS. ROBERTS: To the phone call.

1 THE COURT: All right. And compare it to
2 what statement in the phone call?

3 MS. ROBERTS: The entire phone call because
4 nowhere in this phone call do you find Mr. Haas
5 requesting nude photos of underage females.

6 Even if the Court were to assume that this
7 conversation is a conversation about underage females,
8 the request for photographs is not a specific
9 request --

10 THE COURT: Wait a minute. There's no
11 question that part of this is about underage females.
12 It's 12 to eight. This is the 12 to eight program.
13 Come on.

14 MS. ROBERTS: I said excepting the Court's
15 conclusion that it is about -- that the conversation
16 is about underage females, there is still no
17 information, no evidence, no statement in this phone
18 call by Mr. Haas that he was seeking nude photos. It
19 is true that this phone call supports the statement
20 that Mr. Haas requested photos. However, there's no
21 statement with regards to anybody being unclothed. As
22 a matter of fact, Your Honor, it is just as likely
23 that the request was for a face shot. So that Mr.
24 Haas --

25 THE COURT: What request? I'm trying to see

1 what you're talking about to find what to compare it
2 to.

3 MS. ROBERTS: Your Honor, that's the problem.

4 THE COURT: No. You just made -- you just
5 said, It's more likely that the request is for a face
6 shot. That connotes that you're looking at something
7 in there that constitutes a request. Where is that?
8 I don't see it. But I haven't gone back to read the
9 whole thing all over again. Where is it that you're
10 talking about in your sentence?

11 MS. ROBERTS: Your Honor, in the middle of
12 page 2 of the call, Haas states, "Get me some
13 pictures, too, man, because I can like set it up to
14 where we can make some money beforehand."

15 Okay. CW replies, "Okay. And how does it
16 work with, um, like the way that you do it? Is it
17 like the, um, the younger the more moolah or?"

18 Haas replies, "Yeah."

19 CW says, "Yeah?"

20 Haas, "Yeah. Yep. Yep."

21 CW says, "All righty then. We'll see what I
22 can do." And laughs.

23 That is the substance of the conversation
24 with regards to a request for photos. And there it is
25 clear from the plain language contained in the

1 telephone call and the transcript here that there is
2 no request for a nude photo. He requests photos. The
3 assumption by the agent is that it is a nude photo and
4 that is a misleading statement, and a statement which
5 represents the true nature and context of the
6 information contained in the call.

7 Your Honor, those are the material -- just a
8 moment.

9 Your Honor, those are the material omissions
10 and/or intentional misrepresentations.

11 THE COURT: I only have one intentional
12 misrepresentation. Haas's statement appears on page
13 12 of the affidavit. Haas also requested nude photos
14 of underage females in exchange of money, and you want
15 me to compare that to the transcript Exhibit E, page
16 2, beginning with the statement, "Get me some
17 pictures, too, man, because I can like set it up to
18 where we can make some money beforehand." And it goes
19 all the way down to the -- looks like that
20 conversation goes all the way down to the bottom of
21 page 2 over to page 3.

22 MS. ROBERTS: That's correct, Your Honor.
23 And I believe that the last portion of that ends with
24 CW at the top of page 3 starting, "Yeah, baby. I'm
25 all about that moolah" or "I'm all about my moolah."

1 Your Honor, based upon the omissions that
2 I've identified and the misrepresentation that I've
3 identified, I do believe that the defendant has met
4 its burden in making a *prima facie* showing that the
5 warrant contained both material omissions and at least
6 one intentional misrepresentation.

7 As such, Your Honor, I would ask the Court to
8 reconsider its ruling with regards to a *Franks* hearing
9 on the matter.

10 THE COURT: What are we going to do in a
11 *Franks* hearing that we haven't already done?

12 MS. ROBERTS: Your Honor, reconsider a ruling
13 based upon violations -- the violations that we've
14 identified. I do not believe that there's any
15 additional evidence at this point that we would have.

16 THE COURT: All right. Let me hear from the
17 government on that issue.

18 Do you agree, Ms. Mansfield, that there is no
19 mention in the affidavit that CW was a felon, that she
20 was on probation, that she was pending charges, that
21 there was a felony warrant for a Henrico arrest for
22 providing false identification and forging her
23 sister's signature? Do you agree those were not in
24 the affidavit for the search warrant here being
25 challenged?

1 MS. MANSFIELD: I agree that they were not in
2 the affidavit, Your Honor, and as to just No. 4 in
3 that, the felony warrant, I just want to clarify. I
4 believe -- those, as it was testified to, if my memory
5 is accurate, the agent testified that they took her to
6 her court date, and she was arrested for felony
7 charges in Henrico. I don't know that the evidence is
8 that there was a pending felony active warrant. I
9 believe it was just --

10 THE COURT: Once she told them what happened,
11 they arrested her?

12 MS. MANSFIELD: Correct, Your Honor. It goes
13 to the pending charges.

14 THE COURT: That's actually four things.

15 MS. MANSFIELD: Yes, Your Honor.

16 THE COURT: Okay. A felony arrest for the
17 Henrico making false statements and forging documents
18 in relation to the traffic stop.

19 MS. MANSFIELD: To the traffic stop, yes,
20 Your Honor.

21 THE COURT: All right.

22 MS. MANSFIELD: And, obviously, as Your Honor
23 is aware, the defendant must first make the
24 substantial preliminary showing that a false statement
25 was knowingly and intentionally or with reckless

1 disregard for the truth included or in the instance of
2 an omission, Your Honor, that it was an omission that
3 was designed to mislead the magistrate. And in this
4 case, Your Honor, it's the government's position the
5 defendant has not made that showing given all of the
6 other information and all of the other steps that this
7 agent took and testified that he took and is included
8 in the affidavit to corroborate the testimony -- the
9 information that was provided by that witness. And
10 the corroboration of an informant or of a witness,
11 complainant in this case, is -- excuse me. The degree
12 to which the report is corroborated is an important
13 consideration pursuant to *United States v. Wilhelm*, 80
14 F.3d 116, and I submit, Your Honor, that this
15 affidavit sets forth a bevy of corroboration of what
16 the witness was telling the agents that demonstrates
17 that the omissions of her felony and of the pending
18 charges were not omitted designed to mislead the
19 magistrate in this case.

20 As the agent testified, he was unaware of --
21 at the time of this affidavit what exactly the witness
22 was on probation for, although he was aware clearly,
23 very aware, of the nature of the pending charges in
24 Henrico and the false statement made to the probation
25 officer, but he did not just rely on this witness's

1 statements and omit that information. He took very
2 specific steps to corroborate what CW told him in that
3 case including taking the phone number, running that
4 through a database, confirming that it came back to
5 Mr. Haas, showing her a picture of Mr. Haas that she
6 then identified, and when she represented to the
7 agents that he was continuing to have conversations
8 with her about producing child pornography, and that
9 he drove a light-colored Jetta, they confirmed that he
10 drove a light-colored Jetta, and then they had her
11 ultimately make the recorded phone calls, Your Honor.

12 And I would submit that the recorded phone
13 calls corroborate what the witness -- the information
14 that the witness provided to the agents because
15 without the context it's just quite clear from the
16 phone calls, the government submits, that they're not
17 referring to anything except child pornography. And I
18 can address that when we get to the subtext of the
19 phone calls. But the agents took that additional step
20 to corroborate the witness. And then, as well, this
21 obviously was not an affirmative step they took, but
22 further corroboration for the magistrate to consider
23 is the complaint from the Richmond Police Department
24 or ultimately Richmond originating to Chesterfield
25 dealing with a minor alleging molestation by Mr. Haas,

1 which corroborated the witness saying that Mr. Haas
2 told her he had access to children and that they could
3 produce this child pornography.

4 So I submit, Your Honor, that although these
5 statements were omitted, they were not omissions
6 designed to mislead the magistrate. They are not
7 material to the probable cause given all of the
8 corroboration in this affidavit in that the defense
9 has not made a *prima facie* showing to obtain a *Franks*
10 hearing on that matter.

11 THE COURT: What about the material omission
12 from Exhibit B, page 16, paragraph 25, the failure to
13 include two laptop computers were seized from the
14 defendant's home, thereby making it likely, according
15 to the defense, that the laptop seen by CW in May was
16 not the one in the defendant's truck?

17 MS. MANSFIELD: Your Honor, I would submit
18 that this is not at all material to probable cause.
19 As this court is aware, on the basis of the home
20 search warrant, the agents were authorized to seize
21 all computers to search and ultimately to determine if
22 there were records related to evidence of crimes.

23 Obviously, CW stated that it was a laptop
24 computer that she viewed child pornography on, but
25 there would be no way -- CW did not give any

1 information and without performing a search there
2 would be no way for the agents to be aware of how many
3 laptops Mr. Haas had.

4 THE COURT: But why wasn't it relevant to
5 know that two laptops had been seized, not from the
6 standpoint of the defendant's argument, but from the
7 standpoint of the government's argument? The seizure
8 of two laptops from the home confirms that he's a user
9 of laptops, and when they saw the laptop in the truck,
10 they had authority to seize it, and they got the
11 warrant to seize it.

12 MS. MANSFIELD: That's correct, Your Honor.
13 I would agree with that that they had the authority to
14 seize it.

15 Additionally, in paragraph 27, subsection D
16 of the search warrant authorizing the search and
17 seizure of that laptop, it's page 17 of Defense
18 Exhibit B -- excuse me. Page 18. I apologize, Your
19 Honor. There's information included in the search
20 warrant about individuals who do possess, collect, and
21 receive child pornography often maintain their
22 collections in a digital or electronic format in a
23 safe, secure, and private environment such as a
24 computer. And it goes on to say that these
25 collections are often maintained for several years and

1 are kept close by, usually at the collector's
2 residence or inside the collector's vehicle to enable
3 the individual to view the collection, which is valued
4 highly.

5 And I would submit, Your Honor, that that
6 combined with this laptop being with Mr. Haas in his
7 work truck further supports the probable cause in that
8 it's not -- and that's why it's not -- I guess to Your
9 Honor's point, it could have definitely supported the
10 government's position that Mr. Haas was a user of
11 laptops to include it, but I would submit that it is
12 not --

13 THE COURT: And that he kept the laptop in
14 his vehicle close by so he would be able to see them.
15 What was it? A tractor-trailer?

16 MS. MANSFIELD: It was more of a work truck.
17 I have -- there's a photograph, Your Honor.

18 THE COURT: It looks like a tractor of a
19 tractor-trailer.

20 MS. MANSFIELD: That's correct, Your Honor,
21 yes.

22 THE COURT: Did he drive tractor-trailers?
23 Is he a trucker?

24 MS. MANSFIELD: It's my understanding, Your
25 Honor, he had a tree service business. I believe that

1 may have involved the driving of tractor-trailers,
2 although I'm not fully sure of what the extent of his
3 work with this tractor-trailer was.

4 THE COURT: What about the intentional
5 misrepresentation of Exhibit B, page 12, Haas also
6 requested nude photos of underage females in exchange
7 for money? And she compares that to the transcript on
8 Exhibit E, page 2, where it talks about getting
9 pictures but doesn't talk about getting nudes.

10 MS. MANSFIELD: Well, I think, Your Honor,
11 again, if we look at this as being informed by the
12 background that CW has said that he's constantly
13 asking her about the production of child pornography,
14 I think that Your Honor can -- it is a logical
15 conclusion, and a logical conclusion that certainly
16 the agents made and CW made that making -- excuse me.
17 This whole production has been about CW discussing
18 with Mr. Haas producing child pornography so that they
19 can make money.

20 THE COURT: Well, according to paragraph 12,
21 it says, "CW understood Haas to be referring to the
22 production of child pornography. Haas also requested
23 nude photos of underage females in exchange for
24 money."

25 Isn't a fair reading of that is that he is

1 reciting what CW told him about what it is that she
2 understood at the telephone calls?

3 MS. MANSFIELD: Yes, Your Honor.

4 THE COURT: The whole paragraph has to do
5 with what CW --

6 MS. MANSFIELD: Right, with what she
7 understood the context of this phone call to be.

8 THE COURT: By that same token, the defense
9 says, well, he had a transcript of these phone calls,
10 and there isn't anything in there that would permit
11 reasonably the conclusion that the agent doing the
12 affidavit thought that CW understood that the
13 reference to pictures meant nude pictures in that one
14 sentence there.

15 MS. MANSFIELD: But I think it is, Your
16 Honor, when you look at the answer given right to that
17 by CW. "How does it work? Is it like the younger,
18 the more moolah?" And he says, "Yeah." I think it is
19 a logical conclusion when discussing child pornography
20 that to make money or more money, the photographs are
21 very unlikely to be --

22 THE COURT: Well, are you going to make a lot
23 of money from a child dressed in a pinafore or a prom
24 dress --

25 MS. MANSFIELD: No, Your Honor.

1 THE COURT: -- or a confirmation dress or
2 something like that or are you going to make more
3 money from a child without clothes on?

4 MS. MANSFIELD: Yes, Your Honor.

5 THE COURT: That's your point, that's the
6 inference that can we made from this?

7 MS. MANSFIELD: Yes, Your Honor, that's my
8 point.

9 THE COURT: Anything else on *Franks*?

10 MS. MANSFIELD: If I may, I believe I didn't
11 address specifically what defense argued was their
12 second material admission.

13 THE COURT: Omission.

14 MS. MANSFIELD: Omission, yes, Your Honor.

15 From --

16 THE COURT: You don't need to argue that.

17 MS. MANSFIELD: Oh, okay. Thank you, Your
18 Honor.

19 THE COURT: Anything else on *Franks*? I'd
20 like to go on and get that done.

21 MS. ROBERTS: Yes, Your Honor. Your Honor,
22 with regards to the seizure of the laptop, and the
23 government's directing the Court's attention to the
24 agent's statements in the affidavit regarding
25 characteristics of a person who possesses child

1 pornography, specifically I think the
2 government referenced --

3 THE COURT: It's on page 18, paragraph --

4 MS. ROBERTS: 25 or 27, Your Honor.

5 THE COURT: 27D. D at the top of page 18.

6 "Likewise, individuals who access with intent to view,
7 possess, collect, and receive child pornography often
8 maintain their collections that are in digital or
9 electronic format in a safe, secure, and private
10 environment such as a computer and surrounding area.
11 These collections are often maintained for several
12 years and are kept close by, usually at the
13 collector's residence or inside the collector's
14 vehicle to enable the individual to view the
15 collection, which is valued highly."

16 MS. ROBERTS: Your Honor, yes, I would direct
17 the Court to paragraph 27C. Well, first, to paragraph
18 27C, which immediately precedes the paragraph cited by
19 the government, which is on page 17.

20 THE COURT: Okay.

21 MS. ROBERTS: And that reads, "Individuals
22 who access with the intent to view, possess, collect
23 and receive child pornography almost always possess
24 and maintain their hard copies of child pornographic
25 material, that is their pictures, films, videotapes,

1 magazines, negatives, photographs, correspondence,
2 mailing lists, books, tape recordings, etc., in the
3 privacy and security of their home or some other
4 secure location. Individuals who have a sexual
5 interest in children or images of children typically
6 retain pictures, films, photographs, negatives,
7 magazines, correspondence, books, tapes, recordings,
8 mailing lists, child erotica, and videotapes for many
9 years."

10 THE COURT: That's talking about hard copy
11 material, right, not digital?

12 MS. ROBERTS: Hard copy material is defined
13 as pornographic material including pictures, films,
14 videotapes, magazines, negatives, correspondence. And
15 so in that, Your Honor, I don't think that it is
16 necessarily --

17 THE COURT: This paragraph C looks to me like
18 it's talking about non-electronic formats, non-digital
19 formats. Isn't that what paragraph C is? Paragraph D
20 talks about digital formats. Am I not right about
21 that?

22 MS. ROBERTS: That is correct, Your Honor.

23 THE COURT: All right.

24 MS. ROBERTS: In both instances it indicates
25 that it is likely that these items are kept in a safe

1 and secured location. The facts of this case don't --

2 THE COURT: The one about the digital says
3 including inside the vehicle.

4 MS. ROBERTS: I understand that, Your Honor.
5 But even to that point, what the evidence -- well,
6 first I will say that with regards to the agent's
7 statements and conclusions, the agent's conclusory
8 statements as contained in paragraphs 27 and the
9 entire section, "Characteristics common to individuals
10 who access with the intent to view, collect, receive
11 child pornography and to seek to sexually exploit
12 children," that is exactly the type of conclusory
13 statements that the Court warns are insufficient to
14 establish probable cause. Specifically, Your Honor,
15 in *United States v. Lull* -- I'm sorry. One moment.

16 THE COURT: You're talking about the validity
17 *vel non* of the affidavit. We're talking about now
18 misrepresentation. Why are you talking about this
19 now?

20 MS. ROBERTS: Your Honor, only that the
21 government raised the issue to say --

22 THE COURT: Well, let's don't worry about
23 what the government is going to do anymore unless
24 there is specifically some comment that she said. And
25 they didn't get into testing this validity *vel non* of

1 the warrant in this argument. They were addressing
2 only the comments you made.

3 MS. ROBERTS: In that case, Your Honor --

4 THE COURT: You're mixing these arguments
5 together, and that's not how they are to be
6 considered.

7 MS. ROBERTS: Yes, Your Honor.

8 With regards to the intentional
9 misrepresentation regarding nude photos, the
10 government argued that Agent Gonzalez's
11 misrepresentation could not have been intentional.
12 However, we would point out that during his
13 testimony --

14 THE COURT: Said it wasn't a
15 misrepresentation was her argument. Her argument was
16 it wasn't a misrepresentation when you look at the
17 whole thing, particularly talking about the fact that
18 the pictures were intended to yield money, and that
19 the more money that you get -- you don't get money for
20 clothed children. You get money for naked children.
21 That's the point she was making. So address that.

22 MS. ROBERTS: Your Honor, Agent Gonzalez's
23 statement in the affidavit does not say that Mr. Haas
24 requested photos in exchange for money. They say that
25 he requested nude photos. It specifies nude photos.

1 And that is a conclusion by --

2 THE COURT: No, it's an inference. It's an
3 inference based on the text of a whole two pages that
4 basically says this: I want some pictures, 12 to
5 eight-year-olds. And I want to make moolah from it.

6 Now, she says the officer was reasonable in
7 inferring that you make pictures from nude
8 photographs, not clothed photographs of the 12 to
9 eight-year-olds referred to in that passage. And if
10 that's true, is that an intentional misrepresentation?

11 MS. ROBERTS: I still believe that it is,
12 Your Honor, and it overstates the evidence. And with
13 regards to the inference, Your Honor, it is also an
14 acceptable inference or it stands to reason, common
15 sense, that an individual or a child, in this case,
16 who a person wants to photograph or use for purposes
17 of presenting child pornography, that you want someone
18 with an attractive face. And so, again, that may not
19 be the end, but at least the pictures that are
20 requested, it is just as likely that he is requesting
21 a picture of a head shot, and that's not ruled out
22 that he is first wanting to see a preliminary picture
23 of this individual to include perhaps a head shot.

24 THE COURT: A head shot is not pornography.

25 MS. ROBERTS: A head shot is not pornography,

1 nor is a clothed picture of a child where you can see
2 the child's proportions.

3 THE COURT: Is there any other rebuttal that
4 you have? Because I really would like to get on to
5 the merits of the case if you don't have anything
6 else.

7 MS. ROBERTS: No, Your Honor.

8 THE COURT: All right. I will have an
9 opinion, but the request for a treatment of this under
10 the *Franks* analysis, it fails. There hasn't been any
11 showing sufficient to warrant a *Franks*-type resolution
12 in this case. So we now turn to the issue of the
13 validity of the search.

14 MS. ROBERTS: Your Honor, our second argument
15 is that notwithstanding the Court's ruling that we've
16 not made a *prima facie* showing regarding the presence
17 of intentional misrepresentations and material
18 omissions in the affidavit, the warrant still fails to
19 establish probable cause under a totality of the
20 circumstances analysis.

21 THE COURT: Do you agree -- as I understand
22 it, just so I lay the table correctly, we're not
23 considering the validity of the warrant to search the
24 home?

25 MS. ROBERTS: That is correct, Your Honor.

1 THE COURT: All right.

2 There is no attack on any part of that?

3 MS. ROBERTS: There was no material recovered
4 which the government seeks to introduce at trial in
5 this matter. They recovered some things but none of
6 it is of an incriminating nature.

7 THE COURT: You don't think the warrant in
8 that case was bad, though, do you?

9 MS. ROBERTS: Well, I do have --

10 THE COURT: You think the warrant was bad
11 here?

12 MS. ROBERTS: I think the warrant was bad
13 there for a lot of the same reasons that the warrant
14 was bad here in that -- and the reasons that I'm going
15 to articulate with regards to the face of the warrant.

16 THE COURT: The bottom line here is that
17 there is an amplitude of evidence showing that this
18 fellow was interested in child pornography from a
19 confidential witness or informant, however you want to
20 call it, that establishes firsthand knowledge that it
21 was on a computer and that he has had a longstanding
22 interest in children and child pornography. And I
23 don't see that there's anything wrong with the warrant
24 for the house.

25 MS. ROBERTS: Your Honor --

1 THE COURT: You didn't attack it.

2 MS. ROBERTS: The warrant for the house and
3 the warrant for the 1995 tractor-trailer truck are
4 identical in every respect except for the inclusion by
5 the affiant in paragraph 25 of the September 1st
6 affidavit for search warrant. They read verbatim, the
7 exact same information, except the September 1st
8 updates the magistrate judge and advises that a search
9 of the home pursuant to the August 31st, 2016 warrant
10 had been executed. And then it advises the magistrate
11 judge that Mr. Haas was taken into custody at a
12 different location and that he was arrested on the
13 charges which we've been referring to as the charges
14 out of Chesterfield County involving the 11-year-old.
15 It advises the magistrate judge that a laptop computer
16 was located on the seat in that work truck and that a
17 GPS device was located --

18 THE COURT: Before you go any further, I have
19 up here two things marked Defense Exhibit B. One is a
20 search and seizure warrant with an execution demand of
21 9-14-2016, and an execution demand on the other one
22 for 9-15-2016. And one of them is signed by the
23 magistrate judge on August 31 at looks like 10:30 a.m.
24 and the other one is signed on September the 1st,
25 2016, at 11:05 a.m. Which is the right B?

1 MS. ROBERTS: Your Honor, the correct B is
2 signed September 1st, at 11:05 a.m.

3 THE COURT: What is this thing that I have
4 here on Exhibit B? I mean on the other one.

5 MS. ROBERTS: That is Exhibit C.

6 THE COURT: So I have one that looks like
7 Exhibit C. So I'm returning this B to you, the second
8 B to you. The one I'm returning actually is Exhibit
9 C. Somebody has written over here. Okay.

10 Was the magistrate judge ever told that they
11 seized two computers at the defendant's house?

12 MS. ROBERTS: He was not, Your Honor.

13 THE COURT: Does that make a difference that
14 they did?

15 MS. ROBERTS: Your Honor, I believe it does
16 make a difference.

17 THE COURT: Is there any evidence that the
18 affiant knew that two computers had been seized at the
19 house?

20 MS. ROBERTS: Yes, Your Honor. Through his
21 testimony here in court today I specifically asked him
22 whether or not he was present when the two laptops
23 were recovered.

24 THE COURT: He said he was present, but he
25 said he didn't know that they had been seized.

1 MS. ROBERTS: No, Your Honor, that is not my
2 recollection of his testimony. It was that he was
3 present, that he did not specifically retrieve them or
4 seize them, but that yes, he knew -- I think he said,
5 I probably knew at the time of the swearing out of
6 that second search warrant. He specifically affirmed
7 the statement that he had knowledge of the two laptop
8 computers.

9 THE COURT: Well, I don't recall that being
10 his testimony, but you all will have a chance to deal
11 with it. All right. Go ahead.

12 MS. ROBERTS: Your Honor --

13 THE COURT: What more does the government
14 have to show here to get a warrant, to have a valid
15 warrant? There's not any real doubt. They have
16 probably cause to believe that he has child
17 pornography on his computer. He talks about it all
18 the time. The warrant authorizes the search, the
19 seizure of the computers at home, and they found
20 another one in his truck, so it authorizes the one at
21 the truck. What is your objection to all this?

22 MS. ROBERTS: Your Honor --

23 THE COURT: Other than the reliability,
24 credibility of the CW?

25 MS. ROBERTS: Well, Your Honor, when an

1 officer has reason to know that the information
2 provided by a source is perhaps questionable --

3 THE COURT: I'm not helping you here. I'm
4 sorry. Let me start again. Let's assume that I found
5 that there isn't any problem with what he did with
6 respect to the credibility of CW, that that is
7 sufficient unto the day. Given that there's no basis
8 for an attack on that theory at all, in other words,
9 he didn't mislead anybody, what he put in there was
10 fine, what he left out doesn't make a difference.

11 Now, with all the evidence that CW provided
12 and the evidence that they corroborated, and the
13 evidence of the telephone calls, why isn't that enough
14 to authorize the warrant both in the house and at the
15 truck once they found the computer in the truck?

16 MS. ROBERTS: If the Court were -- assuming
17 that the Court credits CW, that would thereby lend the
18 information in the affidavit as being reliable, and if
19 the Court were to view the affidavit or the
20 information provided by CW as being reliable
21 information, then I think that we would have a problem
22 asserting that the warrant is not valid on its face.

23 THE COURT: Right. So the real rub here is
24 CW's reliability and credibility; is that right?

25 MS. ROBERTS: That is, Your Honor.

1 THE COURT: That's the gravamen of what
2 you're attack is; is that correct?

3 MS. ROBERTS: That's correct.

4 THE COURT: Well, let's argue that then.
5 I'll be glad to hear you on that. I'm just trying to
6 define issues. Now that I know that the issue here is
7 the credibility/reliability of CW and whatever the
8 evidence is that was given or was not given is
9 dispositive of whether the warrant is valid or not,
10 I'll hear your argument on the whole credibility
11 issue, if you don't mind. And I recognize there's
12 some overlap between what you argued about omissions
13 in the *Franks* context and this topic, but I'm willing
14 to hear -- I understand that it has different thrusts
15 and different contexts. So I'll be glad to hear you
16 argue that even if you repeat yourself on this point
17 now that I know what the dispositive issue really is.

18 MS. ROBERTS: Yes, Your Honor.

19 Your Honor, on the face of the warrant, the
20 four corners of the warrant provides certain
21 assertions that go to the issue of probable cause.
22 The assertion by CW that she actually observed child
23 pornography on the computer in May of 2016. Second,
24 there is the assertion in the affidavit and search
25 warrant by CW that she engaged in multiple

1 conversations with Mr. Haas in which Mr. Haas
2 continuously requested nude photos of children and
3 requested CW -- that CW obtain a juvenile female for
4 purposes of engaging in sexual conduct with Mr. Haas.

5 THE COURT: Mr. Haas or with her? I thought
6 that part of it was that he was -- it was to engage
7 with her so that he could film it. Isn't that what
8 the agent said?

9 MS. ROBERTS: I don't recall that it was
10 exclusive to her.

11 THE COURT: No --

12 MS. ROBERTS: As --

13 THE COURT: No, he wanted to have sex with
14 some people himself, but he wanted it -- as far as
15 child pornography is concerned, he wanted CW to engage
16 in sex with the child so that he could film it. Isn't
17 that what we've been told?

18 MS. ROBERTS: Your Honor, I don't believe
19 that it is, that it was specified that an underage
20 female would have sex with CW as opposed to the
21 underage female having sex with Mr. Haas or some other
22 person or persons. That is not to say that -- I guess
23 there are all kinds of inferences that have been made,
24 so there's nothing to rule out the possibility that
25 the sexual interaction was supposed to be between

1 Haas, CW, and an underage individual, but I just don't
2 think that the evidence is clear on that one way or
3 the other.

4 THE COURT: All right. Excuse me.

5 MS. ROBERTS: Your Honor, in addition, the
6 other piece of evidence found in the affidavit which
7 goes to probable cause would be the phone calls that
8 occurred between CW and Mr. Haas. Those phone calls
9 when viewed and reviewed --

10 THE COURT: Are you talking about the ones
11 that are recorded and we have transcripts for?

12 MS. ROBERTS: Right, it is the recorded phone
13 calls that have been entered into evidence today that
14 are referenced in the search warrant. The search
15 warrant also, however, references at least two other
16 phone conversations, and one in person conversation
17 that allegedly occurred between CW and Haas prior to
18 agents setting up the recorded phone call. Those two
19 calls, the earlier calls and the earlier in person
20 conversation, were not recorded in any way, and so the
21 substance of that is based strictly on CW's account of
22 that.

23 THE COURT: The substance of what?

24 MS. ROBERTS: The substance of those earlier
25 conversations as reflected in the affidavit, and the

1 substance of the earlier phone calls as reflected in
2 the affidavit.

3 THE COURT: Excuse me. I thought you were
4 starting to talk about the phone calls in Exhibits E
5 and F. You started off and then you drifted off and
6 you talked about the fact that there were other phone
7 calls. Let's confine ourselves first to the recorded
8 phone calls. And you say that they are probative of
9 no probable cause. How is that so?

10 MS. ROBERTS: Your Honor, it's our position
11 that they are not probative at all when viewed without
12 some other explanation or background story to give
13 them context.

14 THE COURT: The background story being --

15 MS. ROBERTS: CW's allegation that there were
16 two previous phone conversations that were not
17 recorded and for which agents were not privy to, and
18 an in person meeting with Haas during which they
19 engage in conversations about child pornography.

20 THE COURT: What about all this?

21 MS. ROBERTS: Well, Your Honor --

22 THE COURT: He swore to the fact that CW told
23 him about the original meeting in May, about her
24 meeting him four years before, approximately in 2012,
25 and what she said the contents were of the two earlier

1 conversations.

2 MS. ROBERTS: Your Honor, but none of that
3 information was corroborated. Although the agent took
4 time to corroborate just basic general information
5 such as CW's name, her address, her phone number, he
6 didn't conduct any or obtain any information that
7 provided any corroboration for the meaningful
8 allegations that she lodged against Mr. Haas.

9 The fact that he verified her name, date of
10 birth, and address does not bear on whether or not she
11 is a credible source. What bears on whether or not
12 she's a credible source are all the things that this
13 court has heard today with regards to her prior felony
14 convictions, to her pending charges, to her lying to
15 Henrico police in July of 2016 about 45 days before he
16 swore out the affidavit.

17 All of those are red flags to this officer,
18 to this agent, that even if he hadn't originally done
19 a due diligence check to find out the record and the
20 voracity of the person that he was dealing with, that
21 when these things occurred and they kept on popping
22 up, that he had then -- that it was unreasonable for
23 him to not conduct a criminal records check.

24 She told him that she had been convicted of
25 offenses in Chesapeake previously. So it wasn't that

1 he was assuming she didn't have a record because she
2 told him she had a record. She also told him that she
3 was on probation. He says that she didn't tell him
4 why -- that CW didn't tell him why she was on
5 probation, but the fact that she told him that she was
6 on probation, the fact that he knew she had a prior
7 criminal record would prompt any reasonable officer
8 relying on a person's statement to look into their
9 criminal history and their record for truthfulness.
10 He didn't do that. He intentionally disregarded that
11 information, and I think we can assume that it was
12 not -- that it was for the purpose of not wanting to
13 know that information and not having to include it.

14 Even if you find that it wasn't an
15 intentional misrepresentation on his part, under the
16 good faith exception to the exclusionary rule, prong
17 one says, "The magistrate or judge issuing a warrant,
18 the good faith exception will not apply if the
19 magistrate or judge issuing a warrant was misled by
20 information in an affidavit that the affiant knew was
21 false or would have known was false except for his
22 reckless disregard for the truth." And that is what
23 we have here. There were --

24 THE COURT: Well, you don't allege it was
25 false.

1 MS. ROBERTS: At this prong, Your Honor, at
2 this point I think that the Court has already made a
3 ruling on that. And so I stand now --

4 THE COURT: You don't contend it was false
5 anyway. False means you intended to say something
6 misleading.

7 MS. ROBERTS: They were --

8 THE COURT: The only intentional
9 misrepresentation --

10 MS. ROBERTS: Is with regards to the nude --

11 THE COURT: Yeah.

12 MS. ROBERTS: Right. This is a material
13 omission that was made in reckless disregard for the
14 truth. And if the Court so finds, then the good faith
15 exception fails in this case.

16 So that is why CW's credibility or her
17 history of voracity as known to Agent Gonzalez at the
18 time that he swore out the affidavit is so incredibly
19 important. The information contained in the
20 affidavit, save the information with regards to the
21 Chesterfield offense, is wholly provided and based
22 upon the acceptance of the source as being a reliable
23 source.

24 And so, Your Honor, in addition to that, on
25 the face of the warrant, in the four corners of the

1 warrant there's not even an allegation in the
2 affidavit that CW was reliable. And in *United States*
3 v. *Lull*, 824 F.3d 109, which was a Fourth Circuit case
4 from 2016, it stands for the proposition that the
5 affiant's omission of the informant's problematic
6 reliability in the affidavit prevented a neutral
7 magistrate from being able to accurately assess the
8 reliability and voracity of the informant's
9 statements.

10 So in this case, as applied to these facts,
11 Agent Gonzalez's failure to even allege the
12 reliability of the CW in the instant affidavit and
13 warrant is exactly the same as the situation in *Lull*
14 in which the Court found that that was problematic and
15 that that prevented the magistrate from performing his
16 duties.

17 In addition to that, any affidavit that omits
18 all of the informant's credibility undermines the
19 issuing magistrate's ability to perform his role as a
20 neutral arbiter of probable cause.

21 THE COURT: Is that *Lull*?

22 MS. ROBERTS: That is *Lull*, Your Honor, yes.

23 Your Honor, our second argument is that the
24 affidavit -- on the face of the affidavit, the face of
25 the warrant, that the affidavit fails to establish a

1 sufficient nexus between the criminal conduct, the
2 place to be searched, and the items to be seized.
3 First, the evidence of child sexual assault alone does
4 not support probable cause to search for child
5 pornography.

6 THE COURT: So wait a minute. There's a
7 nexus between what?

8 MS. ROBERTS: The nexus between the criminal
9 conduct alleged, and the place to be searched, and the
10 items to be seized.

11 Again, if the Court ultimately rules that CW
12 is credible, then there would be -- the Court would be
13 making a finding that the information provided by her
14 in the warrant was properly considered. However, if
15 the Court decides that CW is not reliable and that
16 that is an issue that is fatal to the government's
17 case, then what that leaves us with is only evidence
18 of the child's sexual assault as it relates to the
19 Chesterfield offense. But there the 11-year-old never
20 asserted the presence or use of a laptop, never
21 asserted the presence or use of a camera or other
22 device used or associated with child pornography.
23 There was no mention that Haas took pictures, that he
24 displayed images to her or anything of that nature.
25 And finally, there was no GPS device, no evidence that

1 there was a GPS device present.

2 THE COURT: What's the GPS device have to do
3 with this case? Are they offering it into evidence?
4 To show what?

5 MS. ROBERTS: Your Honor, we have reviewed --

6 THE COURT: Are you offering it into evidence
7 to show what, Ms. Mansfield? There's really no
8 discussion in the papers about the GPS at all.

9 MS. MANSFIELD: That's correct, Your Honor.
10 We will state on the record we're not offering the GPS
11 device into evidence.

12 THE COURT: Okay. So that's irrelevant.

13 MS. ROBERTS: Your Honor, finally, there's no
14 indication that the laptop observed by law enforcement
15 in the tractor-trailer on September 1st is the same
16 laptop allegedly viewed by CW in May of 2016.

17 What you heard here today -- I'm sorry. What
18 is contained in the affidavit is a statement that CW
19 observed a laptop. There's no description provided in
20 the affidavit that would allow law enforcement
21 officers to be able to identify with particularity or
22 specificity the item that they are searching for in
23 the home. Certainly, the record is absent of any
24 description whatsoever.

25 It is convenient today that Agent Gonzalez on

1 the stand, when asked on the stand said that CW told
2 him that it was a black laptop. That is information
3 that would have been relevant and material and that
4 should have been --

5 THE COURT: What was seized from the truck?

6 MS. ROBERTS: Your Honor, there was a black
7 laptop seized from the truck. That statement that it
8 was a -- that she said "black laptop" does not appear
9 in the affidavit and had we been able to explore the
10 substance of the report as part of our case-in-chief
11 for *Franks*, then we would have been able to present
12 evidence to the Court that it did not appear in either
13 of his reports. Specifically, the report that
14 detailed the statements CW made.

15 Now, that report's not into evidence. The
16 Court did not allow that, but right now the government
17 has the report, and I'm not sure if they're willing to
18 stipulate that the report does not indicate that there
19 is a description.

20 THE COURT: It's either in there or it's not.

21 MS. ROBERTS: Right. But the report itself
22 is not included in the material that the Court has.
23 The government objected to our moving it into
24 admission. The absence of this information in the
25 report and the absence of the information in the

1 affidavit --

2 THE COURT: You didn't offer it into evidence
3 to show the color of the laptop. You offered it to
4 impeach him about something else. I never was called
5 upon to rule on such an issue as that that I recall.

6 MS. ROBERTS: No, Your Honor, at the
7 conclusion --

8 THE COURT: Yeah, you had it out. You
9 offered it. Yes, I kept it out. But you had used it
10 only to impeach him about something that didn't have
11 to do with the color of the laptop, and he admitted
12 what it was that you wanted him to answer, and she
13 objected on that basis, and I held that the statement
14 was not admissible to impeach him, that there was no
15 impeachment and therefore no need to admit the report
16 that you're talking about.

17 You never raised the issue of the color of
18 the laptop and whether that report was pertinent to
19 that or not. He testified about the color of the
20 laptop, but you didn't raise that issue.

21 MS. ROBERTS: Your Honor, if I can have a
22 moment.

23 Your Honor, the government has advised that
24 it is willing to stipulate that the agent's report
25 only references a laptop and that there's no

1 description contained.

2 MS. MANSFIELD: Yes, it showed pictures on a
3 laptop, Your Honor.

4 THE COURT: All right.

5 MS. ROBERTS: Your Honor, if you strip away
6 the statements that are attributed to CW and her
7 credibility, what you're left with is the allegation
8 regarding a touch offense in Chesterfield. And that
9 alone does not establish probable cause to believe
10 that Mr. Haas is likely to collect or possess child
11 pornography.

12 For that I would refer -- for that
13 proposition I would refer the Court to *Virgin Islands*
14 v. *John*, 654 F.3d 412 at 418 and 419. That's a Third
15 Circuit case from 2011. And of course the Court is
16 familiar with the decision in this circuit in *United*
17 *States v. Doyle*.

18 The affidavit failed to provide the
19 magistrate with a substantial basis for determining
20 the existence of probable cause, and, therefore, it
21 fails on its face.

22 Your Honor, finally, the good faith exception
23 does not save what is otherwise a faulty, in our
24 position, of a faulty and invalid warrant where the
25 affidavit -- because in this case, a reasonable

1 officer executing the warrant, given the four corners
2 of the warrant, should have known that the warrant did
3 not contain sufficiently reliable information so as to
4 establish probable cause.

5 The warrant was facially deficient in that
6 the affidavit failed to allege the reliability of the
7 confidential source.

8 So for those reasons, Your Honor, notwithstanding
9 the Court's denial of the *Franks* hearing,
10 I believe that on the face of the warrant and when
11 examining the four corners of the warrant, the Court
12 still must conclude that the warrant fails to
13 establish probable cause, and that it fails to contain
14 essential elements such as a statement with regards to
15 the reliability of the source, and that no reasonable
16 officer executing the warrant would have been able to
17 conclude that the warrant was valid given those
18 deficiencies.

19 One moment. Nothing further, Your Honor.

20 THE COURT: All right. Okay. You have a
21 whole group of things that are omissions, that you
22 acknowledge were omissions. Why taken together would
23 those omissions not have been important to put before
24 the magistrate judge so he could make a decision about
25 whether CW's statements were sufficiently reliable to

1 constitute probable cause given that CW was the
2 principal, if not exclusive, predicate for the
3 allegations of child pornography on a computer?

4 MS. MANSFIELD: Well, I think because, Your
5 Honor, there was much other evidence provided to the
6 magistrate in this case that corroborated and
7 demonstrated CW's reliability and the reliability of
8 her statements in this context.

9 THE COURT: What is that?

10 MS. MANSFIELD: Again, Your Honor, as Your
11 Honor has recognized, some of this will be repetitive,
12 but the information included in the affidavit that
13 corroborates the information that CW was giving to the
14 agents, first of all, when CW gave the agents a phone
15 number, the agents ran those records, corroborated
16 that that went back to Richard Haas and pulled those
17 phone records for that phone, which is included in the
18 affidavit that they confirmed that that phone number
19 is registered to Richard T. Haas, the account number,
20 P.O. Box 35085, North Chesterfield, Virginia.

21 The agents then ran a CLEAR report confirming
22 that that P.O. box does belong to Haas as well and
23 that Mr. Haas's DMV records also would include that
24 P.O. box.

25 THE COURT: That all goes to show that Haas

1 was who she said he was, right?

2 MS. MANSFIELD: Well, that's correct, Your
3 Honor.

4 THE COURT: What does that have to do with
5 corroborating any of the material allegations except
6 that she was dealing with Haas?

7 MS. MANSFIELD: Well, I guess that's the
8 beginning of it, Your Honor, and then ultimately the
9 agents did perform the two recorded phone calls with
10 CW, had CW do, record her interactions with Mr. Haas
11 in order to corroborate that she was discussing with
12 him the production of child pornography.

13 THE COURT: All right. Now, tell me what --
14 that's Exhibits E and F from the defense, right?

15 MS. MANSFIELD: That's correct, Your Honor.

16 THE COURT: What part of -- let's take E. Is
17 it D and E? It's D and E. What part of D and E
18 corroborates that?

19 MS. MANSFIELD: Well, Your Honor, I think
20 looking more so to E, the transcript of the phone
21 call --

22 THE COURT: You don't think D does?

23 MS. MANSFIELD: I think that D does, Your
24 Honor, in that it is clear that the two of them -- it
25 is clear from this that the two of them have been in

1 contact with each other, that they know each other as
2 well. One moment. He references at the very
3 beginning of that call about one, two, three, four
4 lines into the first page of D. Haas references two
5 lines into that statement, Anyway, just getting back,
6 and I got to take some shit out to the country right
7 now. Long story. Like long story on that shit like
8 we talked about before.

9 So he's referencing clearly things that
10 they've talked about before. I don't think D
11 corroborates as much as E does, Your Honor, but I do
12 think --

13 THE COURT: It doesn't corroborate anything
14 that I can see. What does it corroborate other than
15 they are already in communication with each other and
16 have had previous communication of some sort? I don't
17 see it. If it's there, tell me, but I don't see it.

18 MS. MANSFIELD: She also -- CW, Your Honor,
19 also references about halfway down that first page
20 about picking up one of her girlfriends from
21 Baltimore, which was part of this child pornography
22 scheme that she has discussed with Mr. Haas. And so,
23 Your Honor --

24 THE COURT: Where does that appear? There's
25 no other evidence that I know of about that, about

1 that sentence. Yeah, one of my girlfriends from down
2 where I'm from. I'm going to pick her up. She's
3 going to come up here with me for a while, and then we
4 might go to Baltimore or whatever. What does it
5 corroborate specifically?

6 MS. MANSFIELD: Well, I think, Your Honor,
7 it's corroborating that they have been -- that the two
8 of them have discussed certain things prior to this
9 phone call.

10 THE COURT: Yeah, about a girlfriend coming
11 from Baltimore but not about pornography or anything
12 like that.

13 MS. MANSFIELD: Well, then I think, Your
14 Honor, to Your Honor's point I'll move on to Defense
15 Exhibit E.

16 THE COURT: We're going to close the door on
17 D.

18 MS. MANSFIELD: That's fine, Your Honor. And
19 move on to E. This conversation, Your Honor, when
20 read in the -- when the whole conversation is read, I
21 think it is clear that they are talking about -- it's
22 corroborating CW's statements that they have been in
23 touch and continued discussing child pornography.

24 CW begins to discuss this at the top of page
25 2. Okay. Cool. And if I do make that trip to

1 Baltimore, like I've told you before, you can't
2 bullshit because, you know, she can't be riding, you
3 know, the girl around and stuff like that, just
4 everywhere going. Nobody get pulled over or nothing
5 like that whenever she's on her way down. And you
6 know how that goes.

7 And Haas says, "Now, if you -- I'm serious.
8 You tell me when that shit's hooked up, man, because
9 that will definitely make you -- make you some, too,
10 man, and I mean a lot actually. So depending on how
11 it -- I can't say a lot because it just depends on how
12 it works out, but --"

13 CW says, "Yeah."

14 Haas says, "But, dude, definitely hook that
15 up, man. I'm serious. Get me --"

16 CW: How do you -- huh?

17 And then Haas goes into the discussion.

18 THE COURT: What does that show so far? I
19 don't that shows anything.

20 MS. MANSFIELD: Well, I think, Your Honor,
21 then as we get done, and he says that's --

22 THE COURT: What does it show so far?

23 MS. MANSFIELD: It shows, Your Honor, that --
24 it's clear that -- I think it's clear from the way
25 this conversation starts that they have discussed CW

1 knows someone who can get a young girl and can bring a
2 young girl to Mr. Haas.

3 THE COURT: The girl. It doesn't say the age
4 of the girl.

5 MS. MANSFIELD: Then if you go down, Your
6 Honor, when he says, Get me some first, too, man,
7 because I can like set it up to where we can make some
8 money beforehand. CW says, "Okay. And how does it
9 work with, um, like the way you do it? Is it like
10 the, um, the younger the more moolah?"

11 THE COURT: That's one thing. That part of
12 the conversation doesn't necessarily refer back to the
13 girl in the first paragraph on page 2, does it?

14 MS. MANSFIELD: I think that it can be read
15 that way, Your Honor. I think it can read that they
16 are discussing possibly -- they're discussing hooking
17 that up and getting a young girl. Then they move on
18 to get me some pictures. We can make some money
19 beforehand. And then as you move down the
20 conversation, CW says, "Remember, I said an 8 and a
21 12?" And Haas says, "Yeah, the lower side of that is
22 definitely better."

23 I'm sorry, Your Honor, to skip around.
24 Earlier when CW answers the questions about the
25 pictures, she says, "The younger, the more moolah." I

1 think this conversation in context in corroborating
2 and informing to the reliability of CW, I can't think
3 of what else they would be discussing, the younger,
4 the more moolah in the context of getting pictures,
5 and "I said I had a 12 and an 8. The lower side is
6 definitely better."

7 THE COURT: Well, this corroborates -- I
8 mean, I think it's reasonable to say, to interpret
9 this conversation as saying that he's interested in
10 producing child pornography because he's sufficiently
11 described the taking of pictures, the getting of
12 pictures, and the making of money out of young girls.
13 And I mean that tends to corroborate what she says
14 that he had talked to her about before. But what does
15 that have to do with the probable cause to believe
16 that there's on the computer in the truck child
17 pornography?

18 MS. MANSFIELD: Well, I think, Your Honor,
19 the corroboration is an important part of that because
20 the agent's -- the search warrant -- that's how the
21 agents are ultimately able to seize the computer and
22 view the child pornography. Outside of -- all they
23 could do at this point was corroborate information
24 surrounding the statements that CW had given them.

25 Obviously, based on her statements, Mr. Haas

1 has child pornography on a computer. The agents can
2 corroborate many details of what Mr. Haas has told CW,
3 like his residence, and they can make the recorded
4 phone calls, but they cannot view that computer to
5 corroborate that information. So they were taking all
6 the reasonable steps necessary to corroborate as much
7 as they could to inform the magistrate as to the
8 truthfulness of what CW had told.

9 Obviously, the crux of the child pornography
10 on the computer is CW's statement, and it's simply not
11 possible or not logical, reasonable, for the agents to
12 confirm that piece of information because that's what
13 they're seeking to do through search warrant, but --

14 THE COURT: I mean, what time issue was there
15 here? It looks to me like they could have had further
16 conversations in which she talked more specifically
17 about it. This takes a lot of -- it's almost like
18 having a divining rod trying to find where the water
19 is in listening to this conversation. And you're
20 reading it with a bias.

21 Your bias is, Well, she said that there was
22 child pornography. And she saw it in May. From that
23 then you look at this statement in E, and the
24 statements in E, I think it's reasonable to interpret
25 the second page that he's asking her to make some

1 arrangement to be able to make money out of 12 and
2 eight-year-old girls that involves pictures. And the
3 fact that it involves money and 12 to eight-year-old
4 girls, given his propensity and demonstrated interest
5 that she testified to in the past several months, his
6 interest in child pornography, it's reasonable to
7 believe that that's what's being asked in this E, in
8 this F, but that's a different issue.

9 Yes, it proves that he's interested in child
10 pornography. I don't think there's any question about
11 that and that he wants to make child pornography
12 pictures, but how does it then go on to inform that
13 there is likely to be on the computer in the truck
14 child pornography? How does that work? I don't see
15 what the nexus is here.

16 MS. MANSFIELD: Well, I think -- well, Your
17 Honor, it works out because CW -- it is corroborating
18 the truthfulness of the statements that CW has made,
19 and, therefore, the truthfulness of the statement that
20 CW made that she saw images of child pornography on
21 Mr. Haas's laptop.

22 THE COURT: Right. We agree with that. I
23 agree with that. It certainly does show that because
24 you have a history of having seen the pictures, having
25 said other conversations, and he's always talking

1 about it, and now they have a recording of him talking
2 about how to do it. All right. But how do we know
3 that that computer is in that truck? How do I -- what
4 do I make a finding on on that aspect of this case
5 because that's what this is all about?

6 MS. MANSFIELD: Okay. Now I understand.

7 THE COURT: She provides no testimony or
8 evidence, nothing anybody has testified to provides
9 any evidence that the stuff she saw on the computer in
10 May was on a computer that was like the computer in
11 the truck or that would allow someone to determine,
12 well, that's the computer that we ought to be seizing.

13 MS. MANSFIELD: Well, okay. Going directly
14 to that question, Your Honor, as the search warrant
15 lays out in a later portion entitled, "Computers,
16 electronic storage, and forensic analysis" on page 22.

17 THE COURT: Wait a minute. I have to get it.

18 MS. MANSFIELD: Yes, Your Honor.

19 THE COURT: Page 22, paragraph 36. All
20 right.

21 MS. MANSFIELD: I may have gone slightly far
22 ahead, but I guess I can start here, Your Honor.

23 THE COURT: That's his discussion of probable
24 cause.

25 MS. MANSFIELD: Well, and it submits, Your

1 Honor, that if a computer or storage medium is found
2 on the subject property, which we're talking about
3 specifically the truck here, Your Honor, which we
4 already know at this time that there's a computer
5 there, that there is probable cause to believe that
6 the records will be stored on that computer, and it
7 goes --

8 THE COURT: I've lost you. Where are you?

9 MS. MANSFIELD: I'm sorry. That sentence
10 following it, "I submit that if a computer or storage
11 medium is found in the subject property --

12 THE COURT: Subject property is defined as
13 the truck.

14 MS. MANSFIELD: That's correct, Your Honor.
15 There's probable cause to believe those records will
16 be stored on that computer or storage medium for the
17 following reasons. And this specific paragraph, Your
18 Honor, discusses essentially how long electronic files
19 can be stored, and that deleted files can be recovered
20 via forensic evidence, and I think if we even go then
21 back, Your Honor, a page -- excuse me.

22 THE COURT: So I take from this that you're
23 saying that paragraph 36A says that if there's a
24 computer in the truck, there will be -- according to
25 his knowledge, training, and experience, the files or

1 remnants of files can be recovered.

2 MS. MANSFIELD: That's correct, Your Honor.

3 THE COURT: Yeah, can be recovered for months
4 after they have been downloaded.

5 MS. MANSFIELD: And backing up slightly, Your
6 Honor, I got slightly ahead.

7 THE COURT: I don't see how that tells us
8 anything. I mean, it seems to me as if the officer
9 had -- the woman had said, and the affidavit
10 contained, that there was a black computer. And let's
11 say it was a Dell. Let's just say that. And then you
12 find a black Dell computer in the truck. That's one
13 thing. And that would link what she viewed in May
14 with what was found in the truck. The question then
15 would be staleness. But the affidavit doesn't say
16 that. There's nothing in here that says that the
17 computer that she saw these images on was black, nor
18 does it say the computer that was seized was black.
19 It just says the computer was seized.

20 So, you know, computers come in all shapes,
21 sizes, configurations. Don't you need more than that
22 under *Lull* and some of these cases to provide the
23 linkage to seize that particular computer? And if so,
24 where is it because paragraph 36A doesn't do it? It
25 just says you can recover old images.

1 MS. MANSFIELD: Sorry, Your Honor. I'm
2 looking through now the paragraphs, as well the
3 background of repeaters and child pornography
4 beginning at paragraph 28, page 19 of the search
5 warrant affidavit, and discusses essentially how
6 computers have changed the production and sharing of
7 child pornography, Your Honor, and essentially the way
8 photos are taken, the way photos are shared, and the
9 way that these images can be reproduced.

10 And I believe, Your Honor, that this does go
11 to the probable cause to search essentially any
12 laptop, that there would be probable cause to search
13 any laptop found in Mr. Haas's possession.

14 THE COURT: Once it is shown that he views
15 pornography on laptops; is that what you're saying?

16 MS. MANSFIELD: Yes, Your Honor. Because of
17 this information as well as going to the point I was
18 just making but probably not as clear as I could the
19 first time.

20 THE COURT: You didn't do the brief in this
21 case, did you?

22 MS. MANSFIELD: No, Your Honor, I did not.

23 THE COURT: Well, the brief in this case
24 doesn't have anything in it about what you're talking
25 about. Your argument is depending upon the particular

1 paragraphs in an affidavit which looks like a form
2 affidavit. So you have two issues. One is there's no
3 discussion in the government's response about the
4 issue. And, two, what's the law on considering what
5 looked like form affidavits?

6 And Church deals with both of those.

7 MS. MANSFIELD: Yes, Your Honor.

8 THE COURT: Here's my take on all this: I
9 don't know what's going on but somebody wrote a brief
10 about opposing a search warrant that wasn't -- I mean
11 defending a search on the basis of something that
12 wasn't being attacked because the government's whole
13 brief deals with the search warrant on the residence.

14 MS. MANSFIELD: The initial brief, the
15 initial response, yes, Your Honor, that's correct.

16 THE COURT: And then a supplemental response
17 tries to correct that, but it doesn't do what you're
18 doing. It doesn't point back to what's in the
19 affidavit. I just don't think that the briefing in
20 here even remotely tracks what the facts are and that
21 the issues that are being discussed are kind of being
22 discussed on the fly here. So I think I'm going to
23 require some further briefing using the transcript.

24 MS. MANSFIELD: Yes, Your Honor. I would
25 appreciate that opportunity.

1 THE COURT: I don't know what else to do.
2 Seems to me like using the transcript we need to have
3 briefing, and we'll let the defendant, whose motion it
4 is, go first.

5 I want it organized and presented in a
6 logical way. To begin, we need to talk about what it
7 is that CW said that provides probable cause to search
8 for computers anywhere. What it is that CW said that
9 provides probable cause to search for computers in the
10 truck. What is the effect of the acknowledged
11 omissions respecting -- you don't have to do it in
12 this order because it's not necessarily the best way
13 to do it, but these are just topics that come to mind.
14 Then I'll defer what I was starting to talk about for
15 a minute about the effect of the omissions and say if
16 you all agree that the search warrants were identical
17 except for some add ons, let's just get a couple of
18 add ons that were made in the September 1 document.
19 You need to deal with what else provides evidence that
20 it was all right -- it was probable cause to search
21 for computers in the truck.

22 The government has pointed out a certain
23 provision. I think it was paragraph 27E. I'm not
24 sure. But that's not discussed in the papers either.

25 And then you had the whole issue of whether

1 or not the magistrate judge or whether or not what was
2 not told about this woman's credibility, CW's
3 credibility, how does that affect anything in the
4 case? The way it's being argued, sometimes you're
5 arguing it as only a component of a *Leon* good faith
6 analysis. Sometimes you're arguing it as deficiency
7 in the warrant.

8 The defendant cites *Lull*, but is *Lull* really
9 a case that applies to the probable cause analysis or
10 is it a good faith case? And it seems to me there's a
11 lot here that needs to be sorted out and briefed.

12 So I'd like to see some new papers, fresh new
13 papers, and don't incorporate by reference. These
14 papers basically, as they're structured, are not of
15 great utility.

16 So when are you going to file yours, Ms.
17 Roberts?

18 MS. ROBERTS: Your Honor, we would ask for 25
19 days. That will allow the request of the
20 transcription of the hearing.

21 THE COURT: Are you ordering the transcript?
22 Is that what you're saying?

23 MS. ROBERTS: Yes, Your Honor.

24 THE COURT: Do you want it expedited?

25 MS. ROBERTS: No, Your Honor.

1 THE COURT: You don't? You think you're
2 going to get this in 25 days?

3 Ms. Daffron happens to be standing in, and
4 she has Judge Lauck she usually has to work with. I
5 don't know what's on the agenda down there. I don't
6 know.

7 Can it be done? When is the soonest you can
8 get in it without expediting it I would think would be
9 one of the questions, Ms. Daffron, mindful of your
10 prior obligations to Judge Lauck?

11 THE COURT REPORTER: Two weeks, Your Honor.

12 THE COURT: Two weeks without expediting it?

13 THE COURT REPORTER: Yes, sir.

14 THE COURT: Now, what is the soonest you can
15 get it if it is expedited?

16 THE COURT REPORTER: One week.

17 THE COURT: One week. Okay.

18 So now you know the parameters. What do you
19 want to do?

20 MS. ROBERTS: Your Honor, we will request it
21 expedited and --

22 THE COURT: Now, have you got your calendar
23 out so you can see what you want after that?

24 MS. ROBERTS: Your Honor, we would ask for
25 Friday, March 10th.

1 THE COURT: Friday what?

2 MS. ROBERTS: March 10th.

3 THE COURT: All right. Friday, March 10.

4 When do you want to file your response?

5 Today is what day? This is February 8. Okay. So
6 then you get -- you basically are asking for 30 days?
7 Is that what you're asking for, Ms. Roberts?

8 MS. ROBERTS: Yes, Your Honor.

9 THE COURT: March 10th. So what do you want
10 to do, Ms. Mansfield?

11 MS. MANSFIELD: Your Honor, I was going to
12 ask the Court for two weeks, but I'm mindful of the
13 fact that I have a Fourth Circuit argument on the
14 23rd. So if I could have until Monday, March 27.

15 THE COURT: Sure, March 27. 3-10, 3-27.
16 Reply 3-31?

17 MS. ROBERTS: Your Honor, would the Court
18 allow five days, which would actually make it April
19 3rd, which is our originally scheduled trial date?

20 THE COURT: You mean to tell me that you say
21 that you don't work on the weekends?

22 MS. ROBERTS: I absolutely work on the
23 weekends, Your Honor.

24 THE COURT: Well, you didn't count the days
25 right then from the 27th. Five days would be

1 Saturday. Not only that, you want --

2 MS. ROBERTS: I'd like until Monday, Your
3 Honor.

4 THE COURT: The 3rd?

5 MS. ROBERTS: Yes, Your Honor.

6 THE COURT: All right. That will be done.

7 And I'll set up argument if I need it. I'll look at
8 your papers and I'll see. All right?

9 MS. ROBERTS: Yes, Your Honor.

10 THE COURT: Are you going to persist in your
11 *Franks* argument again? Is there any reason to do
12 that? There's nothing new you have to say on that, is
13 it?

14 MS. ROBERTS: Your Honor, I'd like an
15 opportunity to just review the transcript and digest
16 everything.

17 THE COURT: Don't run that dog out the kennel
18 anymore if you don't have any basis for doing it, will
19 you?

20 MS. ROBERTS: Yes, Your Honor.

21 THE COURT: All right.

22 MS. MANSFIELD: Your Honor, just for planning
23 purposes for subpoenaing of witnesses on the
24 government's end, the defense subpoenaed for
25 April 3rd --

1 THE COURT: I think that prudence would
2 dictate that in order to allow further briefing of the
3 defendant's motion, the trial will be continued
4 generally, and we will reset the trial date after we
5 know the result.

6 MS. MANSFIELD: Thank you, Your Honor.

7 THE COURT: But in regards to that, can you
8 go forward on the case if this motion to suppress is
9 granted?

10 MS. MANSFIELD: Your Honor, he is
11 currently -- Mr. Haas is currently charged in Count
12 One with sex trafficking of children related to
13 information provided, but I would have to assess,
14 given that I'm fairly new to the case, there's a
15 possibility that we may still be able to go forward on
16 additional counts even if the motion is granted.

17 THE COURT: So you're new to this. You
18 inherited this, right?

19 MS. MANSFIELD: That's correct, Your Honor.
20 But I'm certainly getting up to speed, but I do have
21 the knowledge of that count, and I believe that it's
22 not necessarily dependent on the evidence recovered
23 from the computer.

24 THE COURT: Well, you want it all resolved at
25 one trial, do you, Ms. Roberts?

1 MS. ROBERTS: Yes, Your Honor.

2 THE COURT: All right. We'll consider when
3 to set the whole case for a new trial date after we
4 look at this whole issue again.

5 It may be that in the coming days I may issue
6 an order further refining a little bit of what I want.
7 That doesn't mean it restricts you in what you want,
8 but it does mean that if I want something, I'd like
9 for you to address it.

10 All right? Does that take care of everything
11 for now?

12 MS. MANSFIELD: Yes, sir.

13 THE COURT: Thank you very much. We'll be in
14 adjournment.

15 (The proceedings were adjourned at 5:04 p.m.)

16
17 I, Diane J. Daffron, certify that the foregoing is
18 a correct transcript from the record of proceedings
19 in the above-entitled matter.

20
21 /s/
22

23
24
25 DIANE J. DAFFRON, RPR, CCR

_____ DATE